

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

United States of America,)	
)	
plaintiff.)	APPEAL
)	CR15-00707-PHX-SRB
vs.)	Phoenix, Arizona
)	February 17, 2016
Abdul Malik Abdul Kareem,)	9:40 a.m.
)	
Defendant.)	
)	
)	

BEFORE: THE HONORABLE SUSAN R. BOLTON, JUDGE
REPORTER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY #2
(Pages 152 through 318, Inclusive.)

APPEARANCES:

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CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

INDEXSUMMARY OF COURT PROCEEDINGSPAGE:

JURY SELECTION CONTINUED	Page 154
JURY SWORN	Page 199
PRELIMINARY INSTRUCTIONS TO THE JURY	Page 200
INDICTMENT READ	Page 215
OPENING STATEMENT: Government	Page 225
OPENING STATEMENT: Defense	Page 248

INDEX OF WITNESSES**BRUCE JOINER:**

Direct examination by Mr. Koehler	Page 263
Cross examination by Mr. Maynard	Page 275
Redirect examination by Mr. Koehler	Page 277

OFFICER GREGORY STEVENS:

Direct examination by Mr. Koehler	Page 280
Cross examination by Mr. Maynard	Page 295
Redirect examination by Mr. Koehler	Page 297

SPECIAL AGENT BRIAN MARLOW:

Direct examination by Mr. Koehler	Page 300
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INDEX OF EXHIBITS

<u>EXHIBIT NO.:</u>	<u>DESCRIPTION:</u>	<u>RECEIVED:</u>
---------------------	---------------------	------------------

Exhibit No. 1	Overhead Photograph - Curtis Culwell Center	Page 266
Exhibit No. 2	Helicopter Night Photo 1	Page 290
Exhibit No. 3	Helicopter Night Photo 2	Page 292
Exhibit No. 7	Elk River Tool & Die AK-74 Rifle (5.45 x 39mm) (Item34)	Page 309
Exhibit No. 8	Drum magazine with 73 rounds of 5.45 x 39 mm ammunition (Items 34A, 34B)	Page 311
Exhibit No. 75	Garland crime scene photos	Page 305

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

P R O C E E D I N G S

(Called to the order of court at 9:40 a.m.)

(Open court, jury present.)

JURY SELECTION CONTINUED

THE COURT: Good morning, ladies and gentlemen. Welcome back. Please sit down. The record will show the presence of the prospective jurors, counsel, and the defendant.

Ladies and gentlemen, I want to pick up where we left off yesterday, which is completing the side of the courtroom to my right, the information that you have that I have asked that you provide to me and to counsel.

And we will start with Juror No. 34. And then I will remind you of our two additional questions if you don't remember them from yesterday.

PANELIST NO. 34: Hi. I'm juror No. 34. My marital status is divorced. I have one grown son. I'm a Senior Database Administrator. Occasionally, I teach introduction to JAVA programming for a university. Do you care about the volunteer work we do?

THE COURT: I'm sorry?

PANELIST NO. 34: Are you interested in the volunteer employment that we would be doing or does that not matter?

THE COURT: Is it computer-related?

PANELIST NO. 34: No.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 THE COURT: Then we don't need to know that
2 information.

3 PANELIST NO. 34: Okay. Military service, I have a
4 son who was in the Army but he got hurt early in the basic
5 training in the states so he got an honorable discharge so
6 never really served. And I have never been on a jury before.

7 THE COURT: And what is your highest level of formal
8 education?

9 PANELIST NO. 34: I have a master's degree in
10 computer information systems.

11 THE COURT: Thank you very much. And No. 36.

12 PANELIST NO. 36: I'm No. 36. I have been married
13 for 55 years almost. Two adult children. Ten
14 great-grandchildren. Keeps me busy. Employment, my husband
15 and I both retired. My husband is working part-time keeping
16 busy. He had ten years of the National Guard in Washington
17 State. And I was on a jury one time in traffic court and
18 dismissed.

19 THE COURT: And before you retired, what did you do?

20 PANELIST NO. 36: Oh, many things. Daycare, raising
21 a lot of children, and I had my own cleaning business.

22 THE COURT: And what about military service for you,
23 your spouse, any of your children, or grandchildren?

24 PANELIST NO. 36: Just my spouse. Ten years with the
25 National Guard.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 THE COURT: And your highest -- I'm sorry to
2 interrupt. Your highest level of formal education?

3 PANELIST NO. 36: I had one year of business school.

4 THE COURT: Thank you very much. No. 37.

5 PANELIST NO. 37: Juror No. 37. I'm married. I have
6 two children under the age of 18. I have a son that's in the
7 Air Force stationed in Japan. I work in retail sales. My
8 husband is a stay-at-home dad and is a student in information
9 technology, mobile development. Neither of us have any
10 military service. I did serve on a jury for Burglary. We
11 found the defendant guilty. And my highest level of education
12 is bachelor of science in sports medicine.

13 THE COURT: Thank you very much. No. 38.

14 PANELIST NO. 38: No. 38. I'm single. No kids. I
15 do sales and tech support at a major Internet company. I have
16 never served in the military and no prior jury experience.
17 And my highest level of education is technical college, no
18 degree.

19 THE COURT: Thank you very much.

20 PANELIST NO. 39: Juror 39. I'm married with no
21 children. I'm a special ed teacher. My husband is a BMW
22 technician. Neither of us served in the military. I have
23 never been on a jury. And I have completed by first year of
24 my doctorate.

25 THE COURT: In what field?

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 PANELIST NO. 39: Education.

2 THE COURT: Thank you so much.

3 PANELIST NO. 40: No. 40. Married with two adult
4 children. Both my wife and I are retired. I spent my career
5 in the computer industry. My wife is an artist. Both of us
6 have had no military service other than my serving two years
7 in Air Force ROTC. I have been a prospective juror but never
8 hit the -- never been a juror. And I have a bachelor of
9 science in business administration. And none of my kids or
10 grandkids are in the service as well.

11 THE COURT: And I wanted to ask you in particular,
12 No. 40. You indicated that you're still convalescing from
13 some surgery last year. Are you concerned at all that that --
14 that your jury service would be a problem with the continued
15 convalescing?

16 PANELIST NO. 40: Not at this time.

17 THE COURT: Thank you very much.

18 And if you could pass the microphone to the
19 individual behind you. And you are No. 58.

20 PANELIST NO. 58: Juror 58. I am divorced. I have
21 three grown children. I have recently retired from teaching
22 art for 30 years and now it's my turn. So I -- let's see. I
23 have not been in the military. My ex-husband was in the
24 reserves. And I have been on two trials previously; one was
25 for counterfeit checks and one was a DUI. And the verdict in

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 both was guilty. My highest degree is a bachelor of fine
2 arts.

3 THE COURT: Thank you very much.

4 PANELIST NO. 57: I'm juror 57 and I am married. I
5 have one adult son. I worked for a printing trade association
6 for over 20 years in admin and HR. My husband was in the
7 military for 31 years. He served in Iraq and he is now a
8 firearms salesperson. And my -- I have an associate's degree
9 in admin.

10 THE COURT: Thank you very much.

11 PANELIST NO. 56: No. 56. I am single. Widowed. I
12 have four adult children. I am a substitute teacher, ages K
13 through 12th grade. I have an early childhood bachelor's
14 degree in teaching. And I have not been in the military and
15 no jury duty.

16 THE COURT: Thank you very much.

17 PANELIST NO. 55: Juror 55. I'm single. Never
18 married. My employment was unskilled labor. No military
19 service. No jury service. And I completed the tenth grade of
20 high school.

21 THE COURT: Thank you very much.

22 PANELIST NO. 54: No. 54. I'm married with three
23 grown children. I'm a financial executive and my wife is a
24 registered nurse. Nobody in my family has military service.
25 And I have not had prior jury experience. And my highest

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 formal education is MBA.

2 THE COURT: In your questionnaire you mentioned that
3 you knew someone named Amy Vaughan and we have a witness named
4 Amy Vaughan and let's try to find out if they're the same
5 person.

6 Does the Amy Vaughan you know work for the FBI?

7 PANELIST NO. 54: No, ma'am.

8 THE COURT: Okay. It's a different Amy Vaughan.
9 Thank you very much.

10 PANELIST NO. 53: I'm Juror 53. I'm divorced. I
11 have two grown children. I have been in healthcare for over
12 20 years. I'm a referral coordinator. I have no -- there is
13 no military service with me, my ex-husband, or my children.
14 No jury service. And my highest degree is bachelor's degree
15 in healthcare administration.

16 THE COURT: Thank you very much.

17 PANELIST NO. 52: I'm No. 52. I'm single. Have no
18 children. And I work in customer service for an airline. No
19 military service. I have been called for jury duty but never
20 been on a jury. And my highest level of education is a
21 bachelor's degree in American History.

22 THE COURT: Thank you very much.

23 PANELIST NO. 51: I'm juror 51. I'm married. I have
24 two adult children. I'm retired. My wife is retired. I
25 spent 30 years in the Navy. Highest rank was W-4. My duties

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 included advanced electronics information and personal
2 security on submarines. Traveled around the world many times.
3 Prior jury service was federal grand jury. I have an
4 associate's degree in electrical engineering and over four
5 years of schools in the military.

6 THE COURT: Did you have a career between -- between
7 retirement from the Navy and retirement from work?

8 PANELIST NO. 51: Not that I paid taxes on.

9 THE COURT: Okay. Say no more please.

10 PANELIST NO. 50: That's a hard act to follow.

11 I'm No. 50. I am married. I have two adult
12 children. I'm currently in retail sales. Spouse is a
13 dentist. No military service in any family member. No prior
14 jury service. And I have a master's in counseling education.

15 THE COURT: Thank you very much.

16 PANELIST NO. 73: I'm juror No. 73. I'm married. We
17 have three adult children. I'm a homemaker and self-employed.
18 My husband is a foreman on a high voltage line crew for one of
19 the utility companies. And no military service for myself.
20 My husband was in the Marine Corps. Our oldest son is
21 currently stateside active service in the Army. And I have no
22 prior jury service. My highest level of education is my high
23 school diploma.

24 THE COURT: Thank you very much.

25 PANELIST NO. 74: Juror 74. I have been married for

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 17 years. We have a 10-year-old daughter. I currently am the
2 senior information services manager for a semiconductor
3 company where I have been for 12 years. My wife is a
4 stay-at-home mom for the last six years. Previously, she was
5 a clinical social worker for the VA hospitals. Neither of us
6 have any military service. I don't have any previous jury
7 service. And my highest education is a master's degree in
8 engineering management.

9 THE COURT: Thank you very much.

10 PANELIST NO. 76: Juror 76. I'm divorced. No
11 children. I work as a medical clerk for a health insurance
12 company that works on behalf of the VA. Neither my ex-husband
13 or myself have served in the military. No jury service. But
14 I have been called a few times. And I have a bachelor of arts
15 and I majored in history.

16 THE COURT: Thank you very much.

17 PANELIST NO. 78: Juror No. 78. I'm divorced. I
18 have three adult children. I'm retired. Before that I was a
19 manager for a night club and a bar. No military service other
20 than my father. No prior jury service. And my highest
21 education is high school with some college but no degree.

22 THE COURT: Thank you very much.

23 PANELIST NO. 79: Juror No. 79. Married with two
24 adult children. I retired after 35 years of utility service
25 administrator for a natural gas company. My wife retired

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 after 30 years as a manager in special investigation for an
2 insurance company. I spent four years in the Navy. I was an
3 electronics mechanic and did a six-month tour in the Middle
4 East. I have not sat on a jury and my wife and children did
5 not serve in the military and I have a master's in
6 organizational management.

7 THE COURT: Thank you very much.

8 PANELIST NO. 80: I'm No. 80. Single. No children.
9 I'm a quality analyst at a hospital. No military service and
10 no prior jury service. My highest education level is some
11 college, no degree.

12 THE COURT: Now, in your questionnaire you also
13 identified knowing a person by the name of Mustafa Hussan who
14 is a former co-worker of yours. And let's see if we can find
15 out if it's the same person or a different person.

16 Did this person work for you at the healthcare
17 location where you currently work?

18 PANELIST NO. 80: Yes.

19 THE COURT: Do you know what he did for a living
20 there?

21 PANELIST NO. 80: I think he was some type of nurse.

22 THE COURT: Some type of nurse.

23 Do we know if this individual is in some type of a
24 healthcare occupation, Ms. Brook?

25 MS. BROOK: No. Not in the healthcare profession.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 THE COURT: And how old -- just estimate. How old
2 would you say the Mustafa Hussan --

3 PANELIST NO. 80: Maybe like in his 40s.

4 MS. BROOK: Not the same one.

5 THE COURT: Not the same one. Okay. Thank you very
6 much.

7 PANELIST NO. 82: Hello. I'm 82. I'm not married.
8 I have one child. I currently work for a company that does
9 pumps and distribution with oils and gas and I do the accounts
10 receivables collections. I have not served in the military.
11 I don't have anybody in my family that served in the military.
12 I have no prior jury service. And my highest education is
13 high school.

14 THE COURT: Thank you very much.

15 PANELIST NO. 83: Juror No. 83. I'm single. No
16 children. I work in retail as a guest experience manager. I
17 have no military service, although both my grandfathers served
18 in the military and my brother is currently an officer in the
19 Air Force. I have never been on a jury. And I have a
20 bachelor of science in business marketing and a bachelor of
21 arts in business communication.

22 THE COURT: Thank you.

23 PANELIST NO. 85: No. 85. I'm married. No children.
24 My husband and I are both retired. We have no military
25 service. In addition to the grand jury I mentioned yesterday,

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 I did serve on a trial, a DUI trial, in which case we did find
2 the -- we found guilty. My highest level of education is an
3 MBA.

4 THE COURT: Thank you very much.

5 PANELIST NO. 102: Juror 102. I'm single. No
6 children. I'm a chef. My father was in the Navy in World War
7 II. Never been on a jury. And I have an associate's in
8 culinary arts and three years towards a bachelor with a
9 ministry emphasis.

10 THE COURT: Thank you very much.

11 PANELIST NO. 101: Juror 101. I'm divorced with two
12 adult children now married with children. I have 50 percent
13 ownership in a construction company we started 30 years ago.
14 I have no military service. I have zero education. I have no
15 formal education. I didn't finish seventh grade. I have been
16 called for juror duty several times and never been selected.
17 I assume because I have no education.

18 THE COURT: Thank you very much.

19 PANELIST NO. 101: And is that all?

20 THE COURT: Did you mention military?

21 PANELIST NO. 101: My eldest daughter and her husband
22 are both Captains in the U.S. Army now.

23 THE COURT: Okay. Thank you very much.

24 PANELIST NO. 100: Juror 100. I'm in a 15-year
25 partnership, domestic partner. I have no children unless I

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 can count my furs. I'm a retired RN. And I have military
2 service. Former Vietnam vet. Captain was my rank in the
3 United States Air Force. I was in the medical corps during
4 that period of time as a nurse. I have never served on a jury
5 before. My highest education is a bachelor's in business
6 administration.

7 THE COURT: Thank you very much.

8 PANELIST NO. 99: No. 99. I am married with two
9 adult children. I have a master's degree in counseling
10 psychology. And I work as a therapist with the Department of
11 Corrections. My husband as a Ph.D. in psychology and religion
12 and is a prison chaplain. No military background with my
13 family. No previous jury service.

14 THE COURT: Thank you.

15 PANELIST NO. 98: Juror No. 98. I'm married. I have
16 three kids, ages 12, just turned 15 yesterday, and 16. I am
17 employed in IT at a large financial institution. My wife is a
18 homemaker and home schools our kids. I have no prior military
19 experience, no prior jury service, and my highest education is
20 a bachelor of science in business administration.

21 THE COURT: Thank you.

22 PANELIST NO. 97: I'm juror No. 97. I am divorced.
23 I have four adult children. I have retired from a career in
24 information technology and business information systems. I
25 have no military experience. I have one child who served in

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 the Air Force for four years with an honorable discharge. I
2 currently have a grandchild who is serving in the Air Force
3 right now, his third year, doing aircraft maintenance. I have
4 had prior jury service. I have been on two criminal cases.
5 The first case was a fraud case where we returned a guilty
6 verdict. The second case was a murder case where the trial
7 ended in a mistrial. The jury never received the case to
8 deliberate. And my highest education is some college with no
9 degree.

10 THE COURT: Thank you very much.

11 PANELIST NO. 96: Hi. I'm No. 96. I'm divorced. I
12 have two adult children. I am a certified pharmacy
13 technician. My highest education was two years of college,
14 associate degree in nursing.

15 I have no military experience. My ex-husband was
16 drafted for Vietnam before we met. He served in Vietnam. I
17 have two prior juries; one was a DUI and the other one was an
18 assault and stabbing. And I just found out this morning that
19 my work will only pay for ten days of jury duty a year.

20 THE COURT: Ten days a year?

21 PANELIST NO. 96: Yes.

22 THE COURT: And are you scheduled to work more or
23 less during the same times that we're scheduled to be here in
24 court?

25 PANELIST NO. 96: Yes.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 THE COURT: And would the loss of that additional pay
2 for the days beyond ten that we will be here create a
3 financial hardship?

4 PANELIST NO. 96: Yes. I was just in a car accident
5 three weeks ago and I had to use my sick time and part of my
6 vacation, unfortunately, for that. So I don't have much left.

7 THE COURT: I will excuse you from serving as a trial
8 juror in this case. You may be excused at this time.

9 PANELIST NO. 96: Thank you very much.

10 THE COURT: And your juror number is?

11 PANELIST NO. 96: No. 96.

12 THE COURT: 96. No. 96. Thank you very much.

13 PANELIST NO. 113: Juror 113. Single. No children.
14 I work in the production department of a company that does
15 business phone systems. I served in the Navy. I got out as
16 an E-5. My father and my three brothers were all Air Force
17 and my youngest brother is still serving. I've never served
18 on a jury. And I have a bachelor's in political science.

19 THE COURT: Thank you.

20 PANELIST NO. 115: I'm No. 115. I'm single. I have
21 no children. I'm an attorney right now. I have no military
22 service. No prior jury service. And my highest degree is a
23 juris doctor.

24 THE COURT: Thank you.

25 PANELIST NO. 118: I'm juror 118. I'm married 25

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 years. I have four children. Two are under 18. One is 17.
2 And one is 15. I'm an accountant. My husband is a nuclear
3 engineer. Neither my husband nor myself have military service
4 but on both sides we have several brothers that are in all the
5 branches; Air Force, Marines, and Army. I have been on two
6 juries. They're both criminal here in Maricopa County. One
7 was a kidnapping. We found the defendant guilty. The other
8 was an aggravated robbery. We found him not guilty.

9 THE COURT: Thank you very much.

10 PANELIST NO. 118: And education, he has an
11 accountancy.

12 THE COURT: Thank you very much.

13 PANELIST NO. 122: I'm juror No. 122. I'm married.
14 Five children; three adult children, twins that are 17. I
15 work in aerospace fiberoptic work. My husband works for a
16 helicopter company, manufacturing work there, engineering. No
17 service in the military for my children, myself or my husband,
18 and never served on a jury.

19 THE COURT: And your highest level of education?

20 PANELIST NO. 122: Some college, no degree.

21 THE COURT: Thank you very much.

22 PANELIST NO. 125: Juror 125. I'm married for almost
23 42 years. My husband and I have one son and I have two
24 stepchildren. I have a bachelor's of arts in geography,
25 master's of science in library science, and additional

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 post-graduate work but not completed towards elementary
2 education certification. I have spent most of my working
3 career working as a librarian. My husband and I also at one
4 point owned for a number of years a video store. And I have
5 also worked for a company that did document analyzation for
6 the documents for litigation. My husband for many years was
7 involved in the service station business, including being a
8 service station dealer. My husband was in the Air Force prior
9 to the Vietnam War. My son is currently a Lieutenant in the
10 Navy serving as a liaison officer in the British Navy. My
11 prior jury service, I have been three juries; one involved
12 road rage that turned into an assault with a knife and that
13 jury was a hung jury. The next jury that I was on involved --
14 I'm not sure I can remember all the details, but it started, I
15 think, as perhaps gang-related on the south side of Tucson.
16 And by the time people got into cars and on the north side
17 there was an assault involved and that person was found
18 guilty. The last case I was on was a spousal rape case.
19 There were three charges. The jury found guilty on two of the
20 charges and innocent on one.

21 THE COURT: And your highest level of education?

22 PANELIST NO. 125: The highest degree would be the
23 master's of science and library science.

24 THE COURT: Thank you very much.

25 Ladies and gentlemen, do any of you know any of the

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 other prospective jurors?

2 You have had a chance to look around the courtroom,
3 look around the jury room, hear everybody talk.

4 I see one hand. I actually -- oh, there's two. I
5 was going to say I should see two. You are juror number?

6 PANELIST NO. 45: Juror No. 45. I know juror No.
7 140.

8 THE COURT: Okay. Good. It's always good when the
9 hands match. Sometimes we get one and they say I know
10 somebody and the other one says, "I don't think I know you."

11 But No. 140, you also know juror No. 45; is that
12 correct?

13 PANELIST NO. 140: Yes.

14 THE COURT: The question I have for each of you. If
15 both of you end up on the jury -- and -- is it 45? Will you
16 be able to exercise your own independent judgment about the
17 facts and not be overly influenced by 140's determination of
18 the facts?

19 PANELIST NO. 45: Yes, Your Honor.

20 THE COURT: And same question for you, juror No. 140.

21 PANELIST NO. 140: Yes, Your Honor.

22 THE COURT: Thank you very much.

23 Anybody else think they know any of the other
24 prospective jurors?

25 Ladies and gentlemen, I will be instructing you both

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 preliminarily and in your final instructions that the
2 responsibility of the jury is to find the facts and then apply
3 the law to the facts as you find them and reach a verdict.
4 And that you are to reach a verdict without consideration of
5 sympathy or prejudice.

6 Would any of you find it difficult to render a
7 verdict of guilty if the evidence supported such a verdict
8 because of your own religious, moral, philosophical, or
9 personal beliefs, or because of sympathy for a defendant's
10 personal circumstances or conditions, or merely because
11 rendering a guilty verdict might be an unpleasant task?

12 I see no hands. Thank you.

13 Do any of the prospective jurors believe that as a
14 result of filling out the questionnaire, hearing the statement
15 of the case, and listening to the questions asked by the Court
16 and the answers given by various prospective jurors, that you
17 have formed an opinion about this case?

18 I see one hand. We'll pass the microphone to juror
19 No. 41.

20 PANELIST NO. 41: Yes. May I approach, Your Honor?

21 THE COURT: Yes, you may.

22 (At sidebar on the record.)

23 THE COURT: Good morning. Could you speak into this
24 small microphone please?

25 PANELIST NO. 41: Sure. Yes. As I stated previously

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 yesterday, I swore an oath to tell the truth and not hold
2 anything back. So, therefore, from my views for being an
3 anti-religious extremist, I feel I would be biased, you know,
4 because the case is related to religious extremism. I believe
5 it would be very hard to not have a biased opinion because of
6 the things I believe are happening with ISIS and ISIL.

7 THE COURT: I really appreciate your being so honest
8 with us.

9 PANELIST NO. 41: I don't want to have a false
10 verdict because of my personal opinions possibly affecting
11 someone's life.

12 THE COURT: Is there any objection to excusing this
13 juror?

14 MS. BROOK: No objection.

15 MR. MAYNARD: No objection.

16 THE COURT: Thank you so much, juror 41.

17 (End of discussion at sidebar.)

18 THE COURT: Juror 41 is excused.

19 Were there any other hands raised?

20 Ladies and gentlemen, I have asked all the questions
21 I plan to ask, but the lawyers get a chance to ask some
22 followup questions at this time.

23 And so we will first -- Ms. Brook, are you going to
24 be the one for the government?

25 MS. BROOK: Yes, Your Honor.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 THE COURT: We'll have Ms. Brook address the
2 prospective jurors.

3 And, again, when you answer the question, let's wait
4 until we get one of our microphones to you.

5 MS. BROOK: Good morning again, everyone.

6 I have two quick questions for you. So yesterday the
7 Judge inquired into everybody's background as it relates to
8 IT, computers, computer science, and their experience.

9 Are there any here amongst us who feel that they are
10 experts in the field of computers or computer science? And if
11 you do, if you could just raise your hand.

12 So I'm seeing juror 34. Is there anyone else?

13 Your number, sir?

14 PANELIST NO. 98: 98.

15 MS. BROOK: Juror 98. And anyone else?

16 So specifically then to 34 and 98, if in this case
17 you heard testimony from somebody who was deemed to be a
18 computer expert, would you have a hard time setting aside your
19 own experiences or your opinions and listening fairly to the
20 testimony of that individual?

21 PANELIST NO. 34: Probably I need clarification on
22 what you consider "expert" and what I consider "expert."

23 MS. BROOK: And that's a good question and it's kind
24 of a tangible thing in this sort of a setting to be able to
25 articulate.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 I guess the question is simply this. Do you feel so
2 strongly in your experience, your training as an expert in
3 computers, that it would be hard to listen to somebody else if
4 maybe they said something you disagreed with?

5 PANELIST NO. 34: No. I can listen to someone with
6 an open mind about what they're saying. But "expert," I think
7 I'm really, really good at what I do. I think I'm good as a
8 database administrator. And I think, you know, I'm pretty
9 good with programming but I don't think I'm the best. I think
10 there's always someone better, so I can keep an open mind.

11 MS. BROOK: Okay. Thank you. And was it 96 in the
12 back.

13 THE COURT: No. 98.

14 PANELIST NO. 98: Juror 98. I think I would probably
15 would be okay with that. I can't say for sure because my
16 expertise area I know extremely well. And if it's my
17 expertise area, I might have an issue with it, but if it's
18 not, I'm okay.

19 MS. BROOK: So let me follow up on that a little bit.
20 What exactly is your expertise area specifically?

21 PANELIST NO. 98: I make sure hackers don't get into
22 our computer systems.

23 MS. BROOK: Okay. And let me also follow up briefly
24 with 34, if we can come back.

25 What's your expertise, specifically?

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 PANELIST NO. 34: I'm a programmer, so I know
2 programming very well. I don't know -- I'm not an expertise
3 in networking or certain aspects of it. I know database
4 administration very well, so maybe I'm not considered an
5 expert when you are talking about the overall.

6 MS. BROOK: Okay.

7 PANELIST NO. 34: IT.

8 MS. BROOK: And I apologize. To go back to 98
9 briefly to ask the same followup question, do you feel that
10 you would be able to listen to the evidence fairly and make a
11 judgment based upon the evidence or do you feel that your own
12 opinions and background may come into play?

13 PANELIST NO. 98: Well, like I said, if it's my area
14 of expertise, that small little piece, then I might have an
15 issue if they say something wrong.

16 MS. BROOK: Okay. Great.

17 I have one other question unrelated to IT. And
18 yesterday the Court asked everybody here if they have strong
19 opinions about the right to bear arms. So a number of people,
20 obviously, raised their hand and said that they did.

21 Are any of you here that have those strong opinions,
22 do any of you feel that there should be no restrictions on the
23 right to possess weapons?

24 So what I mean by that, specifically, is does anybody
25 feel that the law should not prohibit certain people like

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 felons to possess weapons?

2 Does anybody disagree with that law? And I'm not --

3 THE COURT: I see no hands, Ms. Brook.

4 MS. BROOK: With that I thank you all.

5 That's all I have.

6 THE COURT: Thank you very much. Mr. Maynard.

7 MR. MAYNARD: I have a few questions. I probably
8 won't be as short as the government was.

9 My client owned a couple of businesses and one of
10 them was a moving business and it also cleaned carpets. So
11 what I want to know is if anybody ever had interactions with
12 those businesses. It was called Git-r Done Moving and Git-r
13 Done Cleaning.

14 Anybody ever get moved by Git-r Done.

15 Never had your carpets cleaned by Git-r Done
16 Cleaning? Okay.

17 There were people here that indicated that they had a
18 relationship with a financial institution. Does anybody here
19 have a relationship other than a checking account or something
20 but they're actually employed by Alliance Bank?

21 Okay. There were also a number of people in their
22 jury questionnaire who indicated having problems with
23 drinking. Not that they had problems with drinking, they had
24 problems with other people drinking.

25 And I don't want to point individuals out, but the

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 question I really had was is there anybody here that is so
2 against drinking that they think it's either a sin or immoral
3 or that it would affect their decision making? In other
4 words, if they thought that somebody was drinking, that they
5 would think that they were a bad person because of that?

6 Okay. Thank you.

7 I have a couple of followup questions with a couple
8 of individuals and I don't believe there was an answer.

9 Juror No. 5 --

10 THE COURT: Could we pass the microphone to No. 5?
11 Thank you, No. 9.

12 MR. MAYNARD: Okay. In your questionnaire you
13 indicated you didn't know whether or not you would be paid for
14 jury duty.

15 PANELIST NO. 5: Right.

16 THE COURT: And I don't remember if the Judge
17 followed up with you on that. Is that a financial hardship
18 for you?

19 PANELIST NO. 5: I did check with my employer and I
20 would be receiving my full pay.

21 MR. MAYNARD: You would be? Okay.

22 You also in your questionnaire mentioned something
23 about if somebody killed in the name of religion they were a
24 coward. I would agree with you.

25 But because this case involves an alternative

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 religion to what most of us here practice, does that affect
2 you at all in this case?

3 PANELIST NO. 5: It's kind of -- I would say it's
4 hard to say. I would take the case based on its merits. But
5 that is my personal belief, you know, whether it's mainstream
6 religion or any alternative religion.

7 MR. MAYNARD: Okay. There's no question my client,
8 Mr. Abdul Malik Abdul Kareem, is a Muslim.

9 PANELIST NO. 5: Okay.

10 MR. MAYNARD: Does that affect your ability to be --

11 PANELIST NO. 5: No.

12 MR. MAYNARD: -- to listen to this case?

13 PANELIST NO. 5: No. It doesn't.

14 MR. MAYNARD: Okay. Juror No. -- I lost the number.
15 Juror 11.

16 THE COURT: Right in front of you, No. 5. Thank you.

17 MR. MAYNARD: And, again, I'm not trying to pick on
18 anybody. Is it working?

19 PANELIST NO. 11: Okay.

20 THE COURT: Yes.

21 MR. MAYNARD: Okay. In your questionnaire, I believe
22 that you said you watched the news very, very closely on this
23 particular case. Do you recall that?

24 PANELIST NO. 11: Yes.

25 MR. MAYNARD: Okay. When you say that, I mean, did

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 you do some independent research, did you look at online
2 articles and things about the case?

3 PANELIST NO. 11: No.

4 MR. MAYNARD: Okay. When you said you followed it
5 very -- what did you mean by that?

6 PANELIST NO. 11: Just the clips I saw on the news.

7 MR. MAYNARD: Okay. Did you -- because of following
8 the case so closely, do you think you have formed any ideas or
9 preconceived ideas or notions about the case from your having
10 followed it so closely?

11 PANELIST NO. 11: I don't know.

12 MR. MAYNARD: Okay. When you say you followed it
13 closely, did you just watch the articles at the time or have
14 you been reading articles in the past several months about the
15 case?

16 PANELIST NO. 11: No. Just as it came up on the
17 news.

18 MR. MAYNARD: Okay. Because you were one of the few
19 that said you followed it so closely. I was surprised half
20 hadn't followed it at all.

21 Do you think that your having followed it closely has
22 an effect on your ability in this case to just hear the
23 evidence here? I mean, in other words, have you already got
24 some preconceived ideas about, jeez, this is what I think
25 because this is what I've read?

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 THE COURT: As related to Mr. Kareem?

2 MR. MAYNARD: As related to Mr. Abdul Kareem.

3 PANELIST NO. 11: I don't think so.

4 MR. MAYNARD: All right. Thank you.

5 Juror 25. Okay. In your questionnaire you indicated
6 that you had visited the Middle East on a tour of the Holy
7 Land. When was that? What kind of tour was it?

8 PANELIST NO. 25: It was approximately 20ish years
9 ago. I was like 16 or 17. And I went with a group from
10 church. And it was -- basically, it was walking in Christ's
11 footsteps, walking the Via Dolorosa leading up to Mount
12 Golgotha just so we could actually see where he was condemned,
13 where the cross was laid on him, where he first fell, where he
14 met Mary Magdalene, where each event happened.

15 MR. MAYNARD: Okay. Do you believe that that
16 experience has affected you so that it would impact your
17 ability to decide this case since my client is a Muslim?

18 PANELIST NO. 25: While it was a religious
19 experience, it didn't have any bearing on any religion for me.
20 I don't think it has any bearing in my personal opinion on
21 this case, no.

22 MR. MAYNARD: Okay. Thank you.

23 A number of people in the jury panel indicated that
24 they are on social media often, every day, many times a day.
25 And some people are on six and seven different types of social

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 media.

2 If the Judge were to ask you not to do any research
3 on the case, not to participate in social media during the
4 term of the trial, is that going to adversely affect anybody
5 so that they don't --

6 THE COURT: Hold on. I'm not going to tell them not
7 to engage in social media if they want to go on Facebook or
8 they want to send out a tweet to their friends about something
9 that has nothing to do with the case.

10 I will be advising them very specifically that they
11 cannot use social media to do any research about the case or
12 to find out any information about the case or any of the
13 people who might be involved in the case.

14 But as it relates to using social media on a personal
15 basis to stay in touch with friends, on a business basis, that
16 is not going to be prohibited.

17 MR. MAYNARD: With the Judge's admonition, does that
18 affect anybody's ability to be a juror in this case?

19 Yes?

20 PANELIST NO. 98: Can I approach please.

21 THE COURT: Juror 98? Yes, please.

22 (At sidebar on the record.)

23 THE COURT: Good morning.

24 PANELIST NO. 98: Good morning. With my job I use
25 social media to determine if people are going to attack us.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 And things like this --

2 THE COURT: "Attack us" meaning attack your company?

3 PANELIST NO. 98: Yes. Sorry.

4 THE COURT: What company is that?

5 PANELIST NO. 98: American Express.

6 THE COURT: Okay.

7 PANELIST NO. 98: And so my concern is if there is
8 any kind of leaks or anything about this, if it comes up and
9 it might come up in my job, I have to see tweets and things
10 like that. So that's my concern.

11 THE COURT: All right. I appreciate the information.

12 PANELIST NO. 98: Okay.

13 THE COURT: Thank you very much.

14 (End of discussion at sidebar.)

15 THE COURT: I know a few people may have asked for a
16 break. I'm going to try to finish the questions and then
17 we'll take a break. Do you have --

18 MR. MAYNARD: Probably about five more minutes.

19 THE COURT: Five more minutes and then I have one
20 final question and then we'll take a rather lengthy break.

21 MR. MAYNARD: Juror 43, in your juror questionnaire
22 you indicated that you had been to Kenya, Malaysia. Could you
23 just give me a little bit more background on that.

24 PANELIST NO. 43: I traveled with a Christian music
25 group. We did concerts there. We were there for about a

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 week, between Singapore and Malaysia, and then one week in
2 Kenya and that was back in 1986 and '87.

3 MR. MAYNARD: If you could pass that to 44.

4 You were in Tanzania, Cypress. Was this all the
5 military?

6 PANELIST NO. 44: No. Just Cypress was the military.

7 MR. MAYNARD: Pardon me?

8 PANELIST NO. 44: Just Cypress was the military.
9 Tanzania and Kenya weren't.

10 MR. MAYNARD: When were you in Tanzania?

11 PANELIST NO. 44: When I was 15 and 16 -- 16 years
12 old. Excuse me.

13 MR. MAYNARD: And juror No. 48?

14 THE COURT: Juror 48 was excused.

15 MR. MAYNARD: Okay. Judge, that's all I have.

16 THE COURT: Thank you.

17 MR. MAYNARD: Thank you.

18 THE COURT: Ladies and gentlemen, a whole lot of
19 questions were asked yesterday both in writing and orally. It
20 may be that there's something that you forgot and you were
21 wondering if I would ever give you a chance to say, "Oh, I
22 forgot to tell you."

23 So if there's anything that would have been
24 responsive that you just didn't think of at the time that you
25 wish to tell us now, please raise your hand.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 One hand in the very back at the end of the last row
2 and then a couple hands up here. So we'll start over in the
3 back corner. You are No. --

4 PANELIST NO. 103: 103.

5 THE COURT: What is the information that you would
6 like to add at this time?

7 PANELIST NO. 103: I forgot about my father being in
8 the military all my childhood. And I also have a niece that
9 is a nurse and she works in a prison on the weekends.

10 THE COURT: Okay. And what branch of the military
11 was your father in all your life?

12 PANELIST NO. 103: He was in the Army, Navy, and
13 Marines, but he retired in the Army of 32 years as a First
14 Sergeant.

15 THE COURT: Okay. Thank you very much.

16 And then there was -- the microphone is with No. 57.

17 PANELIST NO. 57: Can I approach, please?

18 THE COURT: Yes, you may. And then I saw two more
19 hands. We will take No. 57 and then this individual and then
20 141.

21 (At sidebar on the record.)

22 THE COURT: Good morning. Let's wait for the lawyers
23 to get here and you can speak into this microphone.

24 PANELIST NO. 57: Okay. After my husband retired
25 from the military, he was a police officer in Pennsylvania.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 And I think I -- I don't think I mentioned that.

2 THE COURT: Okay. All right. Thank you very much.

3 PANELIST NO. 57: Okay.

4 (End of discussion at sidebar.)

5 THE COURT: No. 141?

6 PANELIST NO. 141: My job only pays for 16 hours and
7 I believe I used that all up today.

8 THE COURT: Okay. Let me -- your job basically pays
9 you for two days?

10 PANELIST NO. 141: Right.

11 THE COURT: And for the rest of that time if you were
12 selected you would not be paid; is that correct?

13 PANELIST NO. 141: I will not be paid.

14 THE COURT: And would the loss of those days' pay
15 create a financial hardship?

16 PANELIST NO. 141: Yes, it is.

17 THE COURT: No. 141, I will excuse you from serving
18 as a trial juror.

19 PANELIST NO. 141: Thank you.

20 THE COURT: Thank you very much. Juror 64?

21 PANELIST NO. 64: No. 64. I don't think how relevant
22 this would be, but when my husband and I were stationed in
23 Washington, D.C. he witnessed the attack on the Pentagon on
24 9/11.

25 THE COURT: He was there and he saw it?

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 PANELIST NO. 64: He ran to the side of the building.
2 He was working for the Surgeon General of the United States
3 Air Force at the time. Saw the smoke and all the commotion.

4 THE COURT: Thank you very much.

5 Is there anyone else? There's a hand on the end to
6 my far right. Your number?

7 PANELIST NO. 102: Juror 102. A guy I knew during my
8 first year of college died overseas in the Middle East from an
9 IED. And I know it was on the questionnaire, but it had
10 totally slipped my mind because I didn't keep contact with him
11 after school.

12 THE COURT: Okay. Thank you very much.

13 No. 25?

14 PANELIST NO. 25: May I approach, Your Honor?

15 THE COURT: Pardon?

16 PANELIST NO. 25: May I approach?

17 THE COURT: Certainly.

18 (At sidebar on the record.)

19 PANELIST NO. 25: It completely slipped my mind
20 yesterday.

21 THE COURT: That's okay. Speak to this microphone
22 please.

23 PANELIST NO. 25: Oh, okay. My brother is a lead
24 detective for the El Mirage Police Department and my
25 sister-in-law is in the FBI but I don't know what she does.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 THE COURT: And is she based here in Phoenix or
2 somewhere else?

3 PANELIST NO. 25: She's in Washington but she was
4 recently transferred here because she got a hardship because
5 she and my brother got married.

6 THE COURT: What is her name.

7 PANELIST NO. 25: Macaela -- her maiden name is
8 Hicks. H-I-C-K-S. Married named is Hughes. H-U-G-H-E-S.

9 THE COURT: Okay. Thank you very much.

10 PANELIST NO. 25: Okay. Thank you.

11 (End of discussion at sidebar.)

12 THE COURT: Is there anyone I missed?

13 Last -- oh, one more.

14 PANELIST NO. 101: May I?

15 THE COURT: Yes, please. It's No. 101.

16 (At sidebar on the record.)

17 THE COURT: Good morning.

18 PANELIST NO. 101: Hi.

19 THE COURT: Come speak to this microphone, please.

20 PANELIST NO. 101: You asked yesterday if anyone
21 considered themselves a firearms expert.

22 THE COURT: Yes.

23 PANELIST NO. 101: Well, that was subjective enough
24 to confuse me, so I wasn't sure how to answer. I owned a 45
25 percent of a firearm -- of a firearms ammunition manufacturing

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 company for years and operated it solely.

2 So I do know ballistics and casings and powder and
3 primers and bullets and wadding and other manual arms for
4 almost all antique firearms and most modern and dozens of
5 specific model numbers.

6 So I guess if I'm not an expert, I'm -- I'll probably
7 be able to be able to find one.

8 THE COURT: You are an expert in ammunition in
9 particular?

10 PANELIST NO. 101: And firearms.

11 THE COURT: Okay. Thank you very much.

12 PANELIST NO. 101: I thought you might want to excuse
13 me but I just did not answer that.

14 THE COURT: Thank you very much, sir.

15 (End of discussion at sidebar.)

16 THE COURT: No. 13?

17 PANELIST NO. 13: My godson did four years in the
18 Marines. And on the questionnaires with the violent attack,
19 my uncle was brutally attacked back in 1984 and later died
20 from complications.

21 THE COURT: Okay. Thank you very much.

22 Last question.

23 Ladies and gentlemen, is there anything we haven't
24 asked you that you think we should know about you that could
25 possibly affect your ability to be fair and impartial in this

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 case?

2 And the last thing I want to say, you have heard a
3 couple of people mention their employers paying them, not
4 paying them, paying them for only a certain number of days.

5 If any of you don't know what the status is of your
6 pay, vis-a-vis the number of days you serve, we need to know
7 before we pick the 16 jurors that will try this case.

8 As you have all heard, for those people who have said
9 "I'm not going to be paid" and "it will create a financial
10 hardship," I have excused them, whether it was two days with
11 the last gentleman or ten days with someone earlier this
12 morning.

13 If you turn out to be one of the 16 jurors chosen and
14 tell me tomorrow, "Gosh, I just found out I'm not going to get
15 paid," it will be too late. I will not be able to excuse you
16 tomorrow. I can only excuse you for hardship, for a financial
17 hardship before we choose the 16.

18 So is there anyone here who is concerned about that?

19 Okay. No. -- so here is what I'm going to do. For
20 those of you that are concerned about that, we're going to
21 take a break right now. And this break is going to last until
22 about 11:15.

23 During that time period, I want all of you to call
24 your employer and find out precisely what their policy is.
25 And if you will not be paid, then I want you to report that

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 immediately to Maureen or Sanessa or Kathy. They will make
2 sure that they will be out in the hallway or some place where
3 you can let them know.

4 If any of you don't have a phone -- I can't imagine
5 that -- but if it's -- I'm just used to saying that from back
6 in the old days when people didn't have phones in their
7 pocket. If any of you need to use our phone, we can make that
8 available to you.

9 But if you have any of those concerns, we need to
10 know about them before we call the 16 up, because that won't
11 be an excuse tomorrow. It's only an excuse before the jurors
12 are selected.

13 So please as you go out, let Sanessa know you are
14 going to call and report back to her so that I can let the
15 lawyers know if any of you have a financial hardship related
16 to your pay.

17 Thank you very much.

18 Ladies and gentlemen, we will reconvene, I hope, at
19 11:15. It may take a few minutes beyond that. It might --
20 but on the break, once again, you are not to discuss the case
21 among yourselves or with anyone else. Not to let anybody know
22 the status of jury selection. Don't talk to the lawyers.

23 There's been some other people in the back of the
24 courtroom that are interested in this case. Don't talk to any
25 of them. Don't let anybody talk to you about the case.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 And we will reconvene -- when we reconvene, it's
2 really going to be tight, because I'm going to leave these
3 seats open to seat the 16 jurors. So we will bring you in,
4 but some of you may have to just kind of stand in the back
5 until we get 16 people in the front.

6 So I'm going to excuse the prospective jurors at this
7 time. We will see -- please try to be out in the hallway by
8 about 11:15, 11:20 at the latest, and we will then select the
9 jurors who will try the case.

10 (Recess taken at 10:38 a.m.)

11 (Open court, no jury present at 10:41 a.m.)

12 LAW CLERK SANESSA GRIFFITH: No. 100 was starting a
13 new job and they asked to be deleted from jury selection. But
14 he is like five weeks and he is going to start training at
15 some point.

16 THE COURT: Okay. So No. 100 told you that he is
17 starting a new job. I don't know why they don't tell us. And
18 so he wants to be excused.

19 Anybody have a problem with that?

20 MS. BROOK: No objection.

21 MR. MAYNARD: No objection.

22 THE COURT: Okay. So we will excuse 100 but don't
23 tell him yet. At this point everybody is coming back.

24 LAW CLERK SANESSA GRIFFITH: Okay.

25 THE COURT: So could you give me the numbers of the

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 ones that are -- so we can see how many of them might make a
2 difference.

3 LAW CLERK SANESSA GRIFFITH: 13, 25, 69, 80, and then
4 100.

5 THE COURT: And 100.

6 Okay. So we took care of No. 100.

7 No. 69. If you will recall is the woman that asked
8 to be excused in any event because she said she was really
9 busy at work. She's the only one that does her job. And I
10 was going to ask you if you -- and now she said it was a very
11 small company and now she's concerned that she won't get paid.

12 Can we excuse 69? Is there any objection?

13 MS. BROOK: No objection.

14 MR. MAYNARD: No objection.

15 THE COURT: Okay. We'll excuse 69.

16 I don't have anyone else on my list who actually said
17 "I want to being excused." There may be some people that you
18 want to challenge, but 69 is the only one that I recall that
19 specifically asked to be excused and we did not excuse her for
20 a hardship that wasn't an automatic, "Sure, I'll let you go."

21 So what I would like to do is ask the government if
22 they have any -- let's just take between 1 and 65.

23 We haven't actually counted, but then we'll count and
24 see where we are so we don't need to talk about people that
25 are in the higher numbers.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 MR. KOEHLER: That's easy. We have no for-cause
2 challenges, Your Honor.

3 THE COURT: Well, that is easy, Mr. Koehler. Thank
4 you.

5 MR. MAYNARD: Same question?

6 THE COURT: Same question, Mr. Maynard.

7 MR. MAYNARD: Same answer.

8 THE COURT: No for-cause challenges?

9 MR. MAYNARD: No.

10 THE COURT: Okay. So let me have Maureen count,
11 because I think what we have now are two people that are
12 uncertain about whether they will get paid or not that are in
13 that group. Okay.

14 We are only through juror No. 49 apparently.

15 Now, let me suggest that rather than waiting, unless
16 you have an objection, can we just excuse 13 and 25 that don't
17 know whether they are going to be paid or not, rather than
18 have them get the bad news later?

19 You know who 25 is.

20 13 is not immediately coming to mind, but we know who
21 25 is.

22 MR. KOEHLER: We think we would rather check.

23 THE COURT: You would rather check?

24 MR. KOEHLER: We would rather check.

25 THE COURT: Rather check?

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 MR. KOEHLER: Yes.

2 THE COURT: And the same with 13?

3 MR. KOEHLER: Yes.

4 THE COURT: So, Sanessa, what are you going to do?

5 LAW CLERK SANESSA GRIFFITH: They're going to let me
6 know. I know 25 is for sure, but I'll check with 13.

7 THE COURT: Well, then, so here is what is going to
8 happen.

9 If 13 and 25, if one or the other reports back that
10 they are not going to be paid, I will excuse them for
11 hardship. And then the line will just drop down one or two
12 which would be to either 50 or 51.

13 Have you reached an agreement on the preliminary
14 instructions?

15 MR. MAYNARD: Yes. I believe we did.

16 MS. BROOK: We have, Your Honor. Did you receive an
17 interlineated copy of them with the changes?

18 THE COURT: If I did receive them, how would I have
19 received them?

20 MS. BROOK: You wouldn't have received it yet. We
21 will do that quickly and get that to Your Honor.

22 THE COURT: I would like to give the preliminaries
23 before lunch if we could.

24 MR. KOEHLER: I want to explain to the Court what it
25 is that we have.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 THE COURT: If you are in agreement, I don't care.

2 MR. KOEHLER: It's going to be a matter of copying
3 and pasting and how much you want to look at.

4 THE COURT: Could I -- I would really like to be
5 looking at it while I heard the explanation. It's really hard
6 to explain editorial changes on jury instructions and have
7 them in my head.

8 MR. KOEHLER: This is more just a concept thing.
9 Count 2, our theory from the start of the case has
10 been "aiding and abetting."

11 THE COURT: I assumed that's what one of the changes
12 was going to be.

13 MR. KOEHLER: And the Count 2 instruction does not
14 include anything with "aiding and abetting."

15 THE COURT: Well, are you -- I understand that Count
16 5 is charged both ways and it's not clear to me which way or
17 whether it's going to be both ways.

18 But Count 2, you're telling me right now, is
19 exclusively "aiding and abetting."

20 MR. KOEHLER: Correct.

21 THE COURT: So we can change the instruction to be an
22 "aiding and abetting" as opposed to the elements without
23 "aiding and abetting."

24 MR. KOEHLER: Correct.

25 THE COURT: No problem. Is that the only problem?

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 MR. KOEHLER: And then just an editorial suggestion,
2 near the end where you talk about using mobile devices to
3 communicate about the case, there's references to Blackberries
4 and so on.

5 We would just recommend updating that to Smartphones
6 and that's it.

7 THE COURT: That's a good idea. Okay.

8 MR. KOEHLER: Blackberries are out of date.

9 THE COURT: I know people particularly that work for
10 the federal government that still use Blackberries.

11 Do you have the interlineated copy for me?

12 MR. KOEHLER: Not yet. We will do that shortly.

13 THE COURT: Okay. And then we will report back to
14 you as soon as we hear from 13 and 25.

15 In the meantime, perhaps you could exercise a few
16 other strikes.

17 Okay. Ms. Brook?

18 MS. BROOK: I don't know if you wanted to take up a
19 housekeeping matter.

20 THE COURT: I do not want to do anything at all that
21 would interfere with your exercising your strikes.

22 MS. BROOK: Okay then.

23 THE COURT: Thank you.

24 MS. BROOK: Thanks.

25 THE COURT: Court is in recess.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 (Recess taken at 10:48 a.m.)

2 (Open court, no jury present at 11:07 a.m.)

3 THE COURT: Thank you. Please sit down. The record
4 will show the presence of counsel and the defendant.

5 Apparently, Nos. 13 and 25 reported back to Sanessa
6 that they did not have any problem with their employment.

7 But apparently after hands went up, several other
8 people got concerned and a lot were on the phone with their
9 employer. And No. 43 has just reported back to Sanessa that
10 her employer told her that she would only be paid at the rate
11 of \$12 an hour and that she makes a great deal more than that.

12 And so I would propose that we excuse 43. Is there
13 any objection?

14 MS. BROOK: No objection.

15 MR. MAYNARD: No objection.

16 THE COURT: 43 is excused.

17 And the other reason I came is that I have excused
18 No. 50. She reported to Sanessa that she just got a message
19 that her mother-in-law had been taken to the hospital and she
20 had to leave and go to the hospital.

21 So I think that will change us to the last qualified
22 juror being 51.

23 And so continue on with your strikes.

24 MS. BROOK: Thank you.

25 THE COURT: We will reconvene as soon as we can.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 MS. BROOK: Thank you.

2 THE COURT: Okay.

3 (Recess taken at 11:08 a.m.; resumed at 11:38 a.m.)

4 (Open court, jury present.)

5 THE COURT: Thank you, ladies and gentlemen.

6 For those of you who can, please be seated. The
7 record will show the presence of the prospective jurors,
8 counsel, and the defendant.

9 Ladies and gentlemen, at this time the courtroom
10 deputy will call the numbers of the 16 jurors selected to try
11 the case.

12 As your number is called, please take a seat in the
13 jury box as Sanessa will direct.

14 THE CLERK: Juror No. 1.

15 THE COURT: I think you get your same seat that you
16 have had since yesterday.

17 THE CLERK: Juror No. 3.

18 Juror No. 5.

19 Juror No. 7.

20 Juror No. 9.

21 Juror No. 15.

22 Juror No. 19.

23 Juror No. 21.

24 Juror No. 22.

25 Juror No. 36.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Juror No. 37.

2 Juror No. 39.

3 Juror No. 40.

4 Juror No. 44.

5 Juror No. 45.

6 And juror No. 49.

7 THE COURT: Those of you, ladies and gentlemen, that
8 were not selected as trial jurors in this case, I want to
9 thank you so much for your being present the last two days and
10 for answering all of our questions both orally and in writing.

11 At this time all of you are excused. Thank you so
12 much for your service on this summons.

13 Will the jury please stand and be sworn.

14 **(The Jury Is Sworn)**

15 THE COURT: Please sit down.

16 Ladies and gentlemen, you just found on your seats a
17 white binder. And on top of the binder you should have found
18 a jury badge and some preliminary instructions. Those numbers
19 can be removed whenever you're ready and you will now be asked
20 to wear that juror badge while you're in and around the
21 courthouse during the trial.

22 I am going to read to you the preliminary
23 instructions. They are available for you to retain in your
24 notebooks during the trial.

25 After I complete reading these instructions, we'll

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 take about a one-hour break for lunch.

2 After lunch we will resume and the lawyers will make
3 their opening statements. And if we have time, we will begin
4 with the testimony in the case.

5 As I read the preliminary instructions, you may
6 follow along or just listen, whatever is your preference.

7 **PRELIMINARY INSTRUCTIONS TO THE JURY**

8 Ladies and gentlemen, you now are the jury in this
9 case, and I want to take a few minutes to tell you something
10 about your duties as jurors and to give you some instructions.
11 These are preliminary instructions. At the end of the trial I
12 will give you more detailed instructions. Those instructions
13 will control your deliberations.

14 You should not take anything I may say or do during
15 the trial as indicating what I think of the evidence or what
16 your verdict should be.

17 This is a criminal case brought by the United States
18 government. The government has charged the defendant with
19 Conspiracy to Transport Firearms and Ammunition in Interstate
20 Commerce with the Intent to Commit a Felony, Aiding and
21 Abetting the Transportation of Firearms and Ammunition in
22 Interstate Commerce with the Intent to Commit a Felony, False
23 Statements, Felon in Possession of Firearms, and Conspiracy to
24 Provide Material Support or Resources to a Foreign Terrorist
25 Organization. The charges against the defendant are contained

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 in the Indictment. The Indictment is simply the description
2 of the charges made by the government against the defendant;
3 it is not evidence of anything.

4 In order to help you follow the evidence, I will now
5 give you a brief summary of the elements of the crimes which
6 the government must prove beyond a reasonable doubt to make
7 its case.

8 The defendant is charged in Count 1 of the Indictment
9 with Conspiracy to Transport Firearms and Ammunition in
10 Interstate Commerce with the Intent to Commit a Felony. In
11 order for the defendant to be found guilty of Conspiracy to
12 Transport Firearms in Interstate Commerce with Intent to
13 Commit a Felony, the government must prove each of the
14 following elements beyond a reasonable doubt:

15 First, beginning on or before January 7, 2015, and
16 continuing through May 3, 2015, there was an agreement between
17 two or more persons to transport firearms and ammunition from
18 one state to another with the intent to commit a felony or
19 with knowledge or reasonable cause to believe a felony would
20 be committed with the firearms and ammunition;

21 Second, the defendant became a member of the
22 conspiracy knowing of at least one of its objects and
23 intending to help accomplish it; and

24 Third, one of the members of the conspiracy performed
25 at least one overt act for the purpose of carrying out the

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 conspiracy.

2 The defendant is charged in Count 2 with Aiding and
3 Abetting the Transportation of Firearms and Ammunition in
4 Interstate Commerce with the Intent to Commit a Felony. In
5 order for the defendant to be found guilty of Aiding and
6 Abetting the Transportation of Firearms and Ammunition in
7 Interstate Commerce with Intent to Commit a Felony, the
8 government must prove each of the following elements beyond a
9 reasonable doubt:

10 First, a person transported firearms and ammunition
11 from one state to another with the intent to commit a felony
12 or with knowledge or reasonable cause to believe a felony
13 would be committed with the firearms and ammunition.

14 Second, the defendant aided, counseled, commanded,
15 induced, or procured that person with respect to at least one
16 element of transporting firearms and ammunition in interstate
17 commerce with the intent to commit a felony;

18 Third, the defendant acted with the intent to
19 facilitate transporting firearms and ammunition in interstate
20 commerce with the intent to commit a felony; and

21 Fourth, the defendant acted before the crime was
22 completed.

23 The defendant is charged in Count 3 of the Indictment
24 with False Statements. In order for the defendant to be found
25 guilty of False Statements, the government must prove each of

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 the following elements beyond a reasonable doubt:

2 First, on or about May 5, 2015, the defendant made a
3 false statement in a matter within the jurisdiction of the
4 Federal Bureau of Investigation, with all of you agreeing on
5 the false statement he made;

6 Second, the defendant acted wilfully; that is, the
7 defendant acted deliberately and with knowledge both that the
8 statement was untrue and that his conduct was unlawful; and

9 Third, the statement was material to the activities
10 or decisions of the Federal Bureau of Investigation; that is,
11 it had a natural tendency to influence, or was capable of
12 influencing, the agency's decisions or activities.

13 The defendant is charged in Count 4 of the Indictment
14 with Felon in Possession of Firearms. In order for a
15 defendant to be found guilty of Felon in Possession of
16 Firearms, the government must prove each of the following
17 elements beyond a reasonable doubt:

18 First, on or about June 10, 2015, the defendant
19 knowingly possessed a firearm;

20 Second, the firearm had been shipped or transported
21 from one state to another state; and

22 Third, at the time the defendant possessed the
23 firearm, the defendant had been convicted of a crime
24 punishable by imprisonment for a term exceeding one year.

25 The defendant is charged in Count 5 of the Indictment

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 with Conspiracy to Provide Material Support or Resources to a
2 Foreign Terrorist Organization. In order for a defendant to
3 be found guilty of Conspiracy to Provide Material Support or
4 Resources to a Foreign Terrorist Organization, the government
5 must prove each of the following elements beyond a reasonable
6 doubt:

7 First, beginning no later than June 2014, and
8 continuing through May 3, 2015, there was an agreement between
9 two or more persons to provide material support or resources
10 to a foreign terrorist organization, specifically, the Islamic
11 state of Iraq and the Levant, also known as ISIL;

12 Second, the defendant became a member of the
13 conspiracy knowing of its object and intending to help
14 accomplish it;

15 Third, ISIL was designated a foreign terrorist
16 organization at the time of the conspiracy;

17 Fourth, the defendant knew that at least one of the
18 following conditions existed:

19 That ISIL was a designated foreign terrorist
20 organization; or

21 That ISIL has engaged, or was engaging, in terrorist
22 activity; or

23 That ISIL has engaged, or was engaging, in terrorism;
24 and

25 Fifth, the offense occurred in whole, or in part,

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 within the United States.

2 The defendant has pled not guilty to the charges and
3 is presumed innocent unless and until proved guilty beyond a
4 reasonable doubt. A defendant has the right to remain silent
5 and never has to prove innocence or present any evidence.

6 The evidence you are to consider in deciding what the
7 facts are consists of:

8 One, the sworn testimony of any witness;

9 Two, the exhibits which are received into evidence;

10 and

11 Three, any facts to which all the lawyers stipulate.

12 Some evidence may be admitted for a limited purpose
13 only. If I instruct you that an item of evidence has been
14 admitted for a limited purpose, you must consider it only for
15 that limited purpose and for no other.

16 The following things are not evidence, and you must
17 not consider them as evidence in deciding the facts of this
18 case:

19 One, statements and arguments of the attorneys;

20 Two, questions and objections of the attorneys;

21 Three, testimony that I instruct you to disregard;

22 and

23 Four, anything you may see or hear when the court is
24 not in session even if what you see or hear is done or said by
25 one of the parties or by one of the witnesses.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Evidence may be direct or circumstantial. Direct
2 evidence is direct proof of a fact, such as testimony by a
3 witness about what that witness personally saw or heard or
4 did. Circumstantial evidence is indirect evidence, that is,
5 it is proof of one or more facts from which one can find
6 another fact. You are to consider both direct and
7 circumstantial evidence. The law permits you to give equal
8 weight to both, but it is for you to decide how much weight to
9 give to any evidence.

10 There are rules of evidence which control what can be
11 received into evidence. When a lawyer asks a question or
12 offers an exhibit into evidence and a lawyer on the other side
13 thinks that it is not permitted by the rules of evidence, that
14 lawyer may object. If I overrule the objection, the question
15 may be answered or the exhibit received. If I sustain the
16 objection, the question cannot be answered, and the exhibit
17 cannot be received. Whenever I sustain an objection to a
18 question, you must ignore the question and must not guess what
19 the answer would have been.

20 Sometimes I may order that evidence be stricken from
21 the record and that you disregard or ignore the evidence.
22 That means that when you are deciding the case, you must not
23 consider the evidence which I told you to disregard.

24 In deciding the facts in this case, you may have to
25 decide which testimony to believe and which testimony not to

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 believe. You may believe everything a witness says, or part
2 of it, or none of it.

3 In considering the testimony of any witness, you may
4 take into account:

5 The opportunity and ability of the witness to see or
6 hear or know the things testified to;

7 Two, the witness' memory;

8 Three, the witness' manner while testifying;

9 Four, the witness' interest in the outcome of the
10 case and any bias or prejudice;

11 Five, whether other evidence contradicted the
12 witness' testimony;

13 Six, the reasonableness of the witness' testimony in
14 light of all the evidence; and

15 Any other factors that bear on believability.

16 I will now say a few words about your conduct as
17 jurors.

18 Until the trial is over:

19 First, you are not to discuss this case with anyone,
20 including your fellow jurors, members of your family, people
21 involved in the trial, or anyone else, nor are you allowed to
22 permit others to discuss the case with you. If anyone
23 approaches you and tries to talk to you about the case, please
24 let me know about it immediately;

25 Second, do not read any news stories or articles or

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 listen to any radio or television reports about the case or
2 about anyone who has anything to do with it;

3 Third, you must not conduct any independent research
4 about the case, the matters in the case, and the individuals
5 involved in the case. In other words, you should not consult
6 dictionaries or reference materials, search the Internet,
7 websites, blogs, or use any other electronic tools to obtain
8 information about this case or to help you decide the case.
9 Please do not try to find out information from any source
10 outside the courtroom. Many of you use cell phones,
11 Smartphones, the Internet and other tools of technology. You
12 must not use these tools to communicate electronically with
13 anyone about the case. This includes your family and friends.
14 You may not communicate with anyone about the case on your
15 cell phone, through e-mail, a Smartphones, iPhone, text
16 messaging, or on Twitter, through any blog or website, through
17 any Internet chat room, or by way of any other social
18 networking websites, including Facebook, My Space, LinkedIn,
19 and YouTube.

20 Fourth, if you need to communicate with me or have
21 any questions during the trial of a witness or about the
22 evidence, simply give a note to the law clerk or the courtroom
23 deputy to give to me. If any juror submits a written
24 question, I will consult with counsel before deciding whether
25 the question can be answered; and

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Fifth, do not make up your mind about what the
2 verdict should be until after you have gone to the jury room
3 to decide the case and you and your fellow jurors have
4 discussed the evidence. Keep an open mind until then.

5 At the end of the trial you will have to make your
6 decision based on what you recall of the evidence. You will
7 not have a written transcript of the trial. I urge you to pay
8 close attention to the testimony as it is given.

9 If you wish, you may take notes to help you remember
10 what witnesses said. If you do take notes, please keep them
11 to yourself until you and your fellow jurors go to the jury
12 room to decide the case. Do not let note taking distract you
13 so that you do not hear other answers by witnesses. When you
14 leave for the day, your notes should be left in the courtroom.

15 Members of the jury, the law provides for a jury of
16 12 persons. In any case lasting several weeks, we seat
17 alternate jurors so that if a juror becomes ill or has a
18 personal emergency, the trial can continue without that juror.

19 Just because you aren't one of the first 12 jurors
20 doesn't mean you are necessarily going to be the alternate.
21 The alternate jurors will be chosen by lot at the end of the
22 case. Until then, each of you must consider yourself a juror
23 in this case. Please do not be concerned with who may or may
24 not be the alternates.

25 The next phase of the trial will begin after lunch.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 First, the courtroom deputy will read the Indictment. Then
2 each side may make an opening statement. An opening statement
3 is not evidence. It is simply an outline to help you
4 understand what that party expects the evidence will show. A
5 party is not required to make an opening statement.

6 The government will then present evidence and counsel
7 for the defendant may cross-examine. Then the defendant may
8 present evidence and counsel for the government may
9 cross-examine.

10 After the evidence has been presented, I will
11 instruct you on the law that applies to the case and the
12 attorneys will make closing arguments.

13 After that, you will go to the jury room to
14 deliberate on your verdict.

15 We are now going to break for lunch until 1:15.

16 Sanessa is going to take all 16 of you out through
17 this door and you will find yourself in a corridor with two
18 jury rooms. And she'll take you first to our jury room.

19 But there's 16 of you and it might be a little
20 crowded in there. So I have arranged with the judge nextdoor
21 whose jury room is also in this corridor to let you use his
22 jury room as well. This is important for two reasons. Number
23 one, because it's crowded, and number two, because each jury
24 room has two bathrooms in it.

25 So you are free to use them at least this week and

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 next week and then we'll see what happens with his trial that
2 is scheduled the week after. But that will allow you to have
3 a little bit more room.

4 Sanessa will also show you how to get back into that
5 corridor after you leave it because there's a keypad lock
6 there so that you're in a corridor that the public can't get
7 into.

8 So if, by chance, you forget the code or can't get
9 back for some reason, at the end of this hallway there are two
10 double doors, glass doors, and next to those doors are a bunch
11 of doorbells. If you push the one that says "Bolton,"
12 somebody will answer the speaker there and will come and help
13 you get back into the jury corridor after lunch.

14 A couple of very important things. Please wear your
15 juror badges in and around the courthouse so that everyone
16 knows that you're on a jury.

17 Second, you have seen that there are some people
18 today in the audience. There may be more people in the
19 audience. Don't talk to them at all. The reason I say don't
20 talk to them at all -- and that's hard, because you want to
21 say hi, good morning, or something -- is because if you're
22 seen, even exchanging pleasantries with someone involved in
23 the case, it could be perceived by a third person looking at
24 this interaction as some improper conduct by that person with
25 the jurors.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Also, if you're wearing your juror badges, hopefully,
2 that will cause other people to not talk in your presence
3 about the case.

4 Probably some of you, if not all of you, are going to
5 be making a phone call or two over the lunch hour to say, "I
6 have been selected on a jury that's going to last for five
7 weeks."

8 And the other person is going to say, "Oh, gosh, is
9 it something interesting?"

10 And your natural reaction is going to be to say, "Oh,
11 yeah. It's a really great case. This is what we've been told
12 that it's about."

13 You can't do that. All you can do is say, "I've been
14 selected to sit on a case that's going to last for five
15 weeks,"

16 You can tell them the precise schedule, if you want,
17 Tuesday through Friday from 9:00 to 4:30. And the other thing
18 you can tell them is, "I can't tell you anything else until
19 the trial is over."

20 When the trial is over, you'll be free to discuss
21 this case with anyone you want. But until then, you cannot,
22 including family members, friends, or anyone else.

23 So with that further admonition, we'll see you at
24 1:15. You can leave through this exit. Just leave your
25 notebooks in your seats and you'll find them there after

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 lunch.

2 (Open court, no jury present at 12:07 p.m.)

3 THE COURT: Please sit down.

4 I've been handed what I understand to be the slides
5 that the government wants to use in its opening statement.
6 And it's open to a page called "The Aftermath."

7 First, let me ask, is this the only slide that the
8 defense has any concern with?

9 MR. MAYNARD: Yes, Your Honor.

10 THE COURT: Okay. And what is the concern?

11 MR. MAYNARD: I just think it shows dead bodies. And
12 I'm not sure that that's relevant. I understand it's from a
13 distance but --

14 THE COURT: Well, I'm not sure I would have known
15 that's what it showed if they weren't labeled. So I don't see
16 any real harm in this. Obviously, it's relevant to the case
17 to some extent what happened in Garland, Texas. And I really
18 don't see that this is a particularly graphic or inflammatory
19 picture.

20 As I said, I'm not sure I would have -- I would have
21 had to study it for a minute to know that it was actually
22 showing two deceased individuals.

23 So I will allow the government to use it.

24 Is there anything else we need to talk about before
25 1:15?

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 MS. BROOK: No, Your Honor.

2 MR. MAYNARD: No, Your Honor.

3 THE COURT: Okay. And your estimate for opening is?

4 MS. BROOK: I think 45 minutes.

5 THE COURT: Forty-five minutes.

6 THE COURT: Your estimate for opening?

7 MR. MAYNARD: Thirty to 45 minutes.

8 THE COURT: Do you have a witness for this afternoon?

9 MS. BROOK: We do.

10 THE COURT: Excellent.

11 So what I think -- well, I'll see what the timing is.

12 My thought is let you go first. Then we take a break
13 because it's a lot to sit through just -- even with color
14 slides, plus Maureen is going to be reading the Indictment
15 which will take a little bit of time as well.

16 We'll take a break. Then we'll have the defense
17 opening and then we will have the first witness.

18 MS. BROOK: All right. Maureen just gave me a note
19 that you want to stay in the courtroom over the lunch hour,
20 Mr. Maynard?

21 MR. MAYNARD: Yes.

22 THE COURT: So here is -- that's fine except for
23 this.

24 We're going to be locking those doors. So if you
25 leave, the doors will lock behind you. So I understand that

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 you might want to do some work or whatever, but we can't leave
2 the doors unlocked because we want to be sure that the stuff
3 in here -- I mean, we trust you with everything in here, but
4 we don't necessarily trust anybody else that could come
5 walking in if the doors were left unlocked.

6 MR. MAYNARD: That would be fine.

7 THE COURT: Okay. All right.

8 Court is in recess until 1:15.

9 (Recess taken at 12:10 p.m.; resumed at 1:17 p.m.)

10 (Open court, jury present.)

11 THE COURT: Good afternoon, ladies and gentlemen.
12 Please sit down.

13 The record will show the presence of the jury,
14 counsel, and the defendant.

15 Ladies and gentlemen, at this time the courtroom
16 deputy will read the formal charges that are contained in the
17 Indictment.

18 After that, we will hear the opening statement of the
19 government.

20 **INDICTMENT READ**

21 THE CLERK: Beginning prior to February 1, 2014, and
22 continuing through May 3, 2015, Abdul Malik Abdul Kareem,
23 Elton Francis Simpson, and Nadir Hamid Soofi resided in
24 Phoenix, Arizona, and frequently spent time together at the
25 respective residences and elsewhere in the Phoenix area. In

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 or around this time period, the three men became interested in
2 violent jihad and the foreign terrorist organization of the
3 Islamic State of Iraq and the Levant. The three men watched
4 and read ISIL-related videos and other materials relating to
5 ISIL and the violent jihad and expressed their support for the
6 terrorist organization.

7 Since at least 2014, using social media, ISIL has
8 called for attacks against citizens -- civilian and
9 military -- of the countries participating in the United
10 States-led coalition against ISIL. For instance, on September
11 21, 2014, ISIL released a speech of Abu Muhammed Al-Adnani, a
12 senior leader and official spokesman of ISIL. In this speech,
13 entitled, "Indeed Your Lord Is Ever Watchful," Al-Adnani calls
14 on Muslims who support ISIL from around the world to defend
15 the Islamic State" and to "rise and defend your state from
16 your place where you may be." In addition, using social
17 media, ISIL has been encouraging individuals to kill specific
18 persons within the United States.

19 At an unknown time but no later than in or about
20 June, 2014, Kareem, Simpson, and Soofi began conspiring to
21 support ISIL. The conspiracy focused on supporting ISIL by
22 providing, among other material support, themselves and their
23 services, to ISIL, including by attacking targets in the
24 United States. Among the targets Kareem, Simpson, and Soofi
25 considered as part of their conspiracy to provide material

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 support to ISIL were military bases, individual military
2 service members, shopping malls, Super Bowl XLIX, which, as of
3 the time of their planning, was to be held in Glendale,
4 Arizona, on February 1, 2015, and a so-called Muhammad Art
5 Exhibit and Contest scheduled to occur in May 2015 at the
6 Curtis Culwell Center in Garland, Texas.

7 On or about May 3, 2015, on the day of the
8 aforementioned contest, Simpson and Soofi drove toward the
9 Curtis Culwell Center in Garland, Texas, stopped their car,
10 got out, and began shooting with assault rifles at security
11 personnel and law enforcement. A security guard was struck by
12 a bullet and injured, and Simpson and Soofi were shot and
13 killed by police officers.

14 On October 15, 2004, in the United States Secretary
15 of State designated al-Qa'ida in Iraq, then known as Jam'at al
16 Tawhid wa'al-Jihad, as a Foreign Terrorist Organization, and
17 as a Specially Designated Global Terrorist. On May 15, 2014,
18 the Secretary of State amended the designation of al-Qa'ida in
19 Iraq as a Foreign Terrorist Organization and as a Specially
20 Designated Global Terrorist entity to add the alias Islamic
21 State of Iraq and the Levant as its primary name. The
22 Secretary also added the following aliases to the ISIL
23 listing: The Islam State of Iraq al-Sham, the Islam State of
24 Iraq and Syria, ad-Dawla al-Islamiyya fi al-Iraq wa-sh-Sham,
25 Daesh, Dawla al Islamiya and Al-Furqan Establishment for Media

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Production. Although the group has never called itself
2 al-Qa'ida in Iraq, this name has frequently been used to
3 describe it through its history. To date, ISIL remains a
4 Designated Federal Terrorist Organization. In an audio
5 recording publicly released on or around June 29, 2014, ISIL
6 announced a formal change of its name to the Islamic State.

7 Count 1. Beginning on or before January 7, 2015, and
8 continuing through May 3, 2015, at or near Phoenix, in the
9 District of Arizona, and elsewhere, Kareem, together with
10 other persons known and unknown, conspired to violate the law
11 in that they knowingly and intentionally conspired to
12 transport firearms and ammunition in interstate commerce with
13 the intent to commit crimes punishable by imprisonment
14 exceeding one year and with the knowledge and reasonable cause
15 to believe that an offense punishable by imprisonment
16 exceeding one year was to be committed therewith, including
17 murder, in violation of Texas law, and aggravated assault in
18 violation of Texas law.

19 In furtherance of the conspiracy and to effect the
20 objects of the conspiracy, the following overt acts, among
21 others, were committed in the District of Arizona:

22 One. On dates beginning before January 7, 2015, and
23 ending on or before May 3, 2015, Kareem, Simpson, Soofi, and
24 other persons known and unknown, traveled to remote desert
25 areas near Phoenix, Arizona, to practice shooting firearms.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Two. On dates between January 7, 2015, and May 3,
2 2015, Kareem provided firearms to Simpson and Soofi.

3 Three. On dates between February 11, 2015, and May
4 3, 2015, Kareem hosted Simpson, Soofi, and other persons known
5 and unknown inside his home in Phoenix, Arizona, to discuss
6 attacking the Muhammad Art Exhibit and Contest in Garland,
7 Texas.

8 Four. On dates between May 1, 2015, and May 3, 2015,
9 Simpson and Soofi traveled from Phoenix, Arizona, to Garland,
10 Texas, armed with firearms, all in violation of the law.

11 Count 2. Beginning on or before May 1, 2015, and
12 continuing through May 3, 2015, at or near Phoenix, in the
13 District of Arizona, and elsewhere, Kareem did knowingly and
14 intentionally transport firearms and ammunition in interstate
15 commerce with the intent to commit crimes punishable by
16 imprisonment exceeding one year and with knowledge and
17 reasonable cause to believe that an offense punishable by
18 imprisonment exceeding one year was to be committed therewith,
19 that is, murder, in violation of Texas law, and aggravated
20 assault, in violation of -- all in violation of Texas law --
21 all in violation of the law.

22 Count 3. On or about May 5, 2015, at or near
23 Phoenix, in the District of Arizona, in a matter within the
24 jurisdiction of the Federal Bureau of Investigation, an agency
25 of the United States, and in a matter involving terrorism,

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Kareem did knowingly and willfully make false, fraudulent, and
2 fictitious material statements, that is;

3 One. That he did not go shooting in the desert with
4 Simpson and Soofi before May 3, 2015;

5 Two. That before May 3, 2015, neither Simpson nor
6 Soofi fired the weapons they used in connection with the
7 attack in Garland, Texas;

8 Three. That Simpson and Soofi did not ask him to
9 participate in an attack of any kind on or before May 3, 2015;

10 Four. That he did not know in advance that Simpson
11 and Soofi planned to conduct an attack in Garland, Texas; and

12 Five. That he did not know about an event, that is,
13 the Muhammad Art Exhibit and Contest that was to take place in
14 Garland, Texas, on or about May 3, 2015, until after Simpson
15 and Soofi were killed while attempting to conduct an attack on
16 the contest, all in violation of the law.

17 Count 4. On or about June 10, 2015, in the District
18 of Arizona, Kareem, having been convicted of a crime
19 punishable by imprisonment for a term exceeding one year, that
20 is, Aggravated Driving Under the Influence in the State of
21 Arizona, did knowingly possess in and affecting interstate
22 commerce firearms, that is, a Taurus model 85 Ultralite .38
23 caliber revolver and a Tanfoglio model Witness 9 millimeter
24 pistol, all in violation of the law.

25 Count 5. Beginning at an unknown time but no later

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 than in or about June, 2014, and continuing through May 3,
2 2015, at or near Phoenix, in the District of Arizona, and
3 elsewhere, Kareem, Simpson, and Soofi, together with other
4 persons known and unknown, knowingly and intentionally
5 conspired to provide "material, support or resources,"
6 including services and personnel, to a foreign terrorist
7 organization, that is, the Islamic State of Iraq and the
8 Levant, which at all relevant times was designated by the
9 Secretary of State as a foreign terrorist organization,
10 knowing that ISIL was a designated foreign terrorist
11 organization, that ISIL engages and has engaged in terrorist
12 activity, and that ISIL engages and has engaged in terrorism.

13 In furtherance of the conspiracy and to effect the
14 objects of the conspiracy, the following overt acts, among
15 others, were committed in the District of Arizona:

16 One. From in or about 2014 up through May 1, 2015,
17 Kareem, Simpson, Soofi, and other persons known and unknown
18 watched videos depicting jihadist violence and apparent
19 wartime footage in Syria, Iraq, and elsewhere in the Middle
20 East.

21 Two. On dates between February 2014 and May 1, 2015,
22 Kareem, Simpson, and Soofi, and other persons known and
23 unknown, watched videos depicting torture and executions
24 perpetrated by individuals and groups purportedly acting on
25 behalf of ISIL and other violent jihadist groups.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Three. While watching the videos referenced in
2 paragraphs 1 and 2, Kareem exhorted and encouraged Simpson and
3 Soofi to engage in violent activity in the United States to
4 support ISIL and impose retribution for United States military
5 actions in the Middle East.

6 Four. On dates between October 2014 and May 1, 2015,
7 Simpson "re-tweeted" videos depicting violence and apparent
8 wartime footage in Syria and Iraq as well as videos depicting
9 torture and executions perpetrated by individuals and groups
10 purportedly acting on behalf of ISIL and other violent
11 jihadist groups.

12 Five. On dates between February 2014, and May 3,
13 2015, Kareem, Simpson, Soofi, and other persons known and
14 unknown, traveled to remote desert areas near Phoenix,
15 Arizona, to practice shooting firearms. Kareem arranged the
16 shooting trips, provided transportation to shooting trips, and
17 provided guidance to Simpson and Soofi on how to operate and
18 fire assault rifles.

19 Six. On dates between February 2014 and May 1, 2015,
20 Kareem, Simpson, Soofi, and other persons known and unknown,
21 listened to and watched videos of nasheeds, which are
22 inspirational Islamic songs. The videos accompanying the
23 nasheeds depicted people wearing black masks and head scarves
24 riding in trucks with black flags mounted on them and shooting
25 rifles.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Seven. On dates between October 2014 and May 1,
2 2015, Simpson "tweeted" and used social media to communicate
3 with ISIL and other violent jihadists, and to communicate with
4 ISIL representatives and other violent jihadists.

5 Eight. On dates between June 2014 and continuing
6 through March 2015, Kareem, Simpson, and Soofi, and others
7 known and unknown, researched travel to the Middle East for
8 the purpose of traveling overseas to support ISIL and to fight
9 alongside ISIL.

10 Nine. Beginning on or about December 31, 2014, and
11 continuing to on or about May 1, 2015, Kareem, Simpson, Soofi,
12 and others known and unknown, attempted to acquire pipe bombs.
13 Kareem inquired about the types of explosives that would be
14 required to damage or destroy public venues, including the
15 Westgate Mall and the University of Phoenix Stadium in
16 Glendale, Arizona, located adjacent the Westgate Entertainment
17 District and the location of Super Bowl XLIX, which was to be
18 held on February 1, 2015.

19 Ten. On or about February 11, 2015, the organizers
20 of the Muhammad Art Exhibit and Contest announced that the
21 contest would be held at the Curtis Culwell Center in Garland,
22 Texas, on May 3, 2015. After the announcement, Kareem,
23 Simpson, Soofi, and others, known and unknown, discussed ways
24 to disrupt the contest.

25 Eleven. On date between February 1, 2015, and May 3,

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 2015, Kareem hosted Simpson, Soofi, and other persons known
2 and unknown, inside his home in Phoenix, Arizona, to discuss
3 attacking the Muhammad Art Exhibit and Contest in Garland,
4 Texas.

5 Twelve. On or about March 20, 2015, Simpson accessed
6 materials published by ISIL on that same day that contained
7 residential address information for United States military
8 service members and a call by ISIL for supporters to attack
9 such military service members. A handwritten note
10 subsequently found in the apartment shared by Simpson and
11 Soofi contained the name, personal information, and Phoenix,
12 Arizona address of one of the military service members
13 identified for targeting by ISIL.

14 Thirteen. On unknown dates between December 2014 and
15 April 2015, Simpson, Soofi, and others, known and unknown,
16 traveled to Yuma and elsewhere in Arizona and drove on or near
17 military installations after having discussed plans to attack
18 a military base.

19 Fourteen. On or about April 21, 2015, Kareem watched
20 "Flames of War," an ISIL propaganda video.

21 Fifteen. On dates between May 2014 and May 3, 2015,
22 Kareem provided firearms to Simpson and Soofi.

23 Sixteen. On or about April 6, 2015, Kareem feigned
24 having been struck by a car in a parking lot, and later
25 attempted to make an insurance claim based on the incident in

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 order to raise money to support the conspiracy.

2 Seventeen. On dates between May 1, 2015, and May 3,
3 2015, Simpson and Soofi traveled from Phoenix, Arizona, to
4 Garland, Texas, armed with firearms. Simpson and Soofi were
5 also carrying printed paper versions of the ISIL flag.

6 Eighteen. On May 3, 2015, Simpson and Soofi exited
7 their vehicle and began shooting firearms at security and law
8 enforcement personnel near the Muhammad Art Exhibit and
9 Contest at the Curtis Culwell Center in Garland, Texas, all in
10 violation of the law.

11 To which the defendant has entered a plea of not
12 guilty.

13 THE COURT: Thank you, Maureen.

14 The government may make its opening statement.

15 **OPENING STATEMENT: Government**

16 MS. BROOK: Thank you, Your Honor.

17 Three men right here in Arizona set out to commit
18 mass murder, an unimaginable Armageddon-like shootout in
19 Texas.

20 Of the three, only one is here in the courtroom
21 today. Only one is here, because the other two died in Texas.
22 The defendant remains. He is here because of the role he
23 played in the attack.

24 The defendant, along with his co-conspirators, shared
25 a mission, a desire to kill disbelieving Americans. The

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 defendant's role in this three-man team was that he was the
2 bank roller. He was the trainer. He was the motivator. And
3 in that, he was the man who stayed behind in the hopes that
4 his role in this team would not come to light.

5 But the path of evidence that the defendant left
6 behind betrayed his plan to hide his role. So on a Sunday
7 evening in May, on May 3rd, as the defendant and his
8 co-conspirators had planned, his co-conspirators drove into
9 the parking lot of the Curtis Culwell Center in Garland,
10 Texas.

11 They were dressed in black, armed in body armor as
12 they had planned, and on that Sunday evening, nearly 200
13 people were in attendance inside that stadium. It was an
14 indoor facility, and as had been advertised for months below,
15 during that point in time, between 5:00 and 7:00 in the
16 evening, they were hosting an event known as the Draw The
17 Prophet Muhammad Contest, an event that drew nearly 200 people
18 who had purchased tickets to be there. People were there
19 looking at cartoons, caricatures that had been drawn of the
20 Prophet Muhammad.

21 And as the defendant and his co-conspirators had
22 planned, just as the event was coming to a close shortly
23 before 7:00, the co-conspirators drove into the parking lot
24 outside of the facility. They wore body armor. They stopped
25 their car and the co-conspirators each got out. With them

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 they had six weapons, semi-assault weapons, as well as rifles
2 and pistols, and over 1500 rounds of ammunition.

3 The defendant's co-conspirators, the driver and the
4 passenger, got out of the car, guns blazing, firing.

5 What they didn't count on was the heroic action of
6 law enforcement who were able to stave off the event and stop
7 the attackers.

8 So why is it that these three men attempted to kill
9 hundreds of Americans?

10 Ladies and gentlemen, in this case you are going to
11 learn more than you ever thought you would about the Islamic
12 State, about ISIS, also known as ISIL, and you're going to
13 hear experts talk about it in a broad array of detail.

14 The defendant is charged not only with participating
15 in the attack there in Garland, but he is also charged with
16 separately providing material support to the Islamic State, to
17 ISIS.

18 I will talk in a little bit about how ISIS infuses
19 this case and about how that terrorist organization has a
20 broad, strategic agenda to inspire and recruit homegrown
21 terrorists.

22 This afternoon I want to talk to you about four
23 separate things. We're going to talk about what happened.
24 We're going to talk about why it happened. We're going to
25 talk about the evidence. And we're going to talk about the

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 crimes.

2 But before we get into each of those four areas, I
3 want to take a moment and talk to you about the defendant and
4 his co-conspirators.

5 The defendant, Decarus Thomas, the name he was born
6 with and the name that he went by back in 2012, the defendant
7 and his two co-conspirators Nadir Soofi and Elton Simpson have
8 known each other for a few years.

9 You will hear evidence in this case that back in
10 2012, the defendant, who then still was known as Decarus
11 Thomas, lived in an apartment along with Elton Simpson.
12 You'll hear in this case that Elton Simpson also went by the
13 name Ibrahim.

14 The two of them lived in an apartment here in Phoenix
15 and they lived there alongside a third man. In the summer of
16 2012, the police executed a search warrant at their apartment.
17 And when they did, they seized the defendant's laptop. It's a
18 Lenovo laptop. And in it stuck a 2 gigabyte thumb drive.
19 They seized it. After the search warrant they returned it.

20 And after the attack in Garland, the police, through
21 another search warrant, searched the computer and the hard
22 drive. You are going to hear that what they found on it was
23 violent jihadi material, propaganda, material about violence.

24 Shortly after the search warrant was executed back in
25 the summer of 2012, the defendant moved out. He moved out and

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 he moved away from Simpson. He was suspicious that the FBI
2 was watching him. He was suspicious that the FBI was tracking
3 him. And he was worried that he was being followed. You will
4 hear that even for a time he cut off his contact with Elton
5 Simpson. But as time moved on and the months carried forward,
6 the defendant and Simpson started to spend time together
7 again.

8 In the summer of 2012, two summers later, Elton
9 Simpson now lives in an apartment with Nadir Soofi. The two
10 of them live in an one-bedroom apartment. It's a one-bedroom
11 apartment that has adjacent to it a small living room with a
12 kitchen. In the bedroom Nadir Soofi lives. In the living
13 room on a L-shaped couch, that's where Elton Simpson lives and
14 sleeps.

15 You're going to hear that for 13 months the two men
16 lived there with Ali Soofi. Ali is Nadir's younger brother.
17 He's going to testify in this case. He lived there with the
18 defendant. He lived there with Simpson and with his older
19 brother Nadir.

20 For 13 months, up until four weeks before the attack,
21 he slept on the other side of the L-shaped couch; Simpson
22 sleeping on one side, he sleeping on the other side. And he
23 watched. He watched as over that period of time Simpson, his
24 brother Nadir, and the defendant became increasingly violent
25 and jihadist.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 He watched the defendant because the defendant was
2 there too. Over time he was there often. He spent a lot of
3 time with Simpson and Soofi. Often he even slept over.

4 And when the defendant would sleep over at the
5 apartment, he would sleep on the side of the couch that
6 Simpson would sleep and Simpson would sleep on the floor.
7 During this time Ali will testify that the three men were
8 soaking in ISIS propaganda. They were watching beheading
9 videos and they were watching those videos on a TV screen that
10 was right there feet away from the couch in the living room.

11 That TV screen was hooked up to a computer and
12 everyone sitting in the living room could see what was on it;
13 ISIS propaganda, beheading videos played loud.

14 You'll also hear that during this time Nadir and
15 Simpson tried to convert Ali to be Muslim.

16 They pushed and they tried, but Ali wasn't budging.
17 So they did become a little more guarded around him as he was
18 not buying into their belief system. Ali was struggling at
19 the time because Ali and Nadir worked together. The two
20 brothers owned together a carpet cleaning business and they
21 weren't making money. They weren't making money to pay rent.
22 They weren't making money to buy food.

23 As the months progressed towards the fall of 2014,
24 the Islamic State through a video, a video that was done by
25 one of the key spokespeople for the Islamic State, they

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 released in September a proclamation which said that they were
2 calling for foreign actors to attack in support of ISIL.

3 The proclamation said:

4 "The best thing you can do is to strive to do your
5 best and kill any disbeliever, whether he be French, American
6 or from any of their allies. Kill the disbeliever whether he
7 be civilian or military. Attack their bases. Do not let them
8 feel secure. Hunt them wherever they may be."

9 This proclamation went out in September.

10 Folks, you're going to hear a lot about the attack in
11 Garland in May. And I want to focus in first on the five to
12 six months before that attack happened.

13 You're going to hear evidence in this case that in
14 November, Simpson forwarded an e-mail to the defendant where
15 he conveyed the fact that in order for him to travel abroad,
16 he had to notify his probation officer. In other words the
17 government had to know that he was seeking permission to
18 travel out of state.

19 A month later in late December you'll hear evidence
20 in this case that the defendant was standing in a parking lot
21 late at night purchasing a gun. And that when he did so, he
22 peeled off \$300, handed it to the man that was selling him the
23 gun, and with a wad of cash still in his hand, looked at him
24 and said, "I'm looking for more guns. Let me know if you have
25 some."

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Days later on New Year's Eve you're going to hear
2 evidence that the defendant was asking a friend, an employee
3 of his if he could get him pipe bombs.

4 And then days after that on January 7th of last year,
5 the Charlie Hebdo attack happened in Paris. Charlie Hebdo is
6 a magazine that was -- that is in Paris. And the magazine had
7 put forward on its cover a caricature, a drawing of the
8 Prophet Muhammad.

9 You will hear that on January 7th, armed jihadi,
10 violent perpetrators broke into the Charlie Hebdo Magazine and
11 they killed 11 of the employees.

12 Media news releases of what had happened and the
13 footage were all over the television. You're going to hear
14 evidence in this case that witnesses saw the defendant
15 cheering, watching footage about those people being killed by
16 these violent jihadists in Paris. You're going to hear
17 witnesses testify that he said, "Those are my people" as he
18 cheered.

19 Throughout this month you will also hear that the
20 defendant was attempting to buy silencers, bulletproof vests,
21 and then more guns. You will hear testimony that the
22 defendant purchased an Elk River rifle that he gave to Nadir.

23 Ali -- they weren't making money. They were inside
24 their house and Nadir and the defendant come in. Nadir has
25 this Elk River rifle. And Ali looks at him and says, "What

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 are you doing?" to which the defendant said, "I bought that
2 for him." And Ali looked and Nadir said, "Maybe in time I
3 will be able to pay him back."

4 You're going to hear about another weapon, another
5 assault rifle that the defendant purchased for Simpson months
6 before, a snubnose AK.

7 You're also going to hear from another witness,
8 another friend of the defendant's. The defendant towards the
9 middle of January reached out to a friend of his, a man by the
10 name of Sergio Martinez-Chavez, and said to him, "I need you
11 to take me shooting." Him in particular because Sergio knew
12 of remote places in the desert where he could go and shoot
13 without being detected.

14 Sergio was busy. He put him off for a little bit.
15 The defendant kept asking. And Sergio said, okay, I'll take
16 you. When they went, the defendant showed up, not just
17 himself, but with Simpson and Soofi. He drove them out to the
18 desert where they fired semi-assault rifles.

19 You will hear that Simpson and Soofi weren't just
20 standing and firing but they were running and firing these
21 rifles at the same time and the defendant stood there
22 laughing.

23 At the defendant's house on Cochise Road you're going
24 to hear from witnesses, friends of the defendant who spent
25 time there, including two children, Juan and Carlos, 11 and 12

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 years old. They lived across the street and they were friends
2 with the defendant. They spent a considerable amount of time
3 with the defendant towards the middle to the end of 2014 and
4 through the first couple of months of 2015.

5 The defendant indoctrinated them into his form of
6 Islam. He bought them presents; a Play Station, a watch, a
7 phone, toys, he took them out to dinner. He told them that in
8 order to be his friend they had to be Muslim. And he also
9 told him that people that don't believe what he believes about
10 Islam are called "kafirs" and that he wanted to kill kafirs.

11 As January turned to February, the Super Bowl was set
12 to -- and did occur here in Glendale, Arizona, on February
13 1st. You're going to hear testimony that the group originally
14 contemplated attacking the Super Bowl and the Westgate Mall, a
15 mall that was adjacent to the Super Bowl facility, a place
16 nearby where thousands of spectators from the Super Bowl would
17 spend time and did spend time.

18 The defendant tried to obtain explosives and
19 ultimately was unable to and so the group shifted their focus
20 to a different attack.

21 Ladies and gentlemen, you're going to hear evidence
22 in this case that on February 3rd the Islamic State released a
23 video, a 26-year-old F-16 pilot, Jordanian pilot, crash landed
24 in Syria. He was captured by the Islamic State and he was
25 killed. Burned to death.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 The video was released by the Islamic State's
2 propaganda machine and it was aired here in the United States.
3 You're going to hear evidence that the defendant, early in the
4 morning, as that footage of the man being burned was aired,
5 woke up Carlos. Enthusiastically, he wanted to show him the
6 video of this man being burned alive.

7 On February 11th the Draw The Prophet Muhammad
8 Cartoon Contest was announced. It was announced both on
9 Facebook as well as on different parts of the Internet.
10 You'll see evidence in this case that two days later, on
11 February 13th, Simpson tweeted, sent out a message on his
12 Twitter account, about the contest happening.

13 You're going to hear evidence in this case about the
14 defendant sitting in his house and being with his
15 co-conspirators discussing their plans to attack the Draw The
16 Prophet Muhammad Contest.

17 As February turned to March, the defendant, along
18 with his co-conspirators, continued to discuss attacking and
19 killing people at the Draw The Prophet Muhammad Contest. The
20 defendant and his co-conspirators continued to watch these
21 ISIS propaganda videos, the beheading videos.

22 And during this month the defendant taught his
23 co-conspirators Simpson and Soofi how to work with their
24 weapons, the Elk River rifle, that AK snubnose. The defendant
25 taught both of them how to disassemble the rifles. How to

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 clean them. How to lubricate them. And then how to
2 reassemble them.

3 Ali will testify about how he watched the defendant
4 at their glass table, the little plexiglas table in their
5 living room, teach the two men how to take care of their
6 weapons.

7 You will also hear witnesses testify about the
8 defendant talking about wanting to sell his possessions and
9 move overseas to fight.

10 March turned to April. Over these four months,
11 January, February, March, and April, the defendant and his
12 co-conspirator Simpson talked frequently. Over those four
13 months they had 380 contacts over their phones, so in the form
14 of phone calls or text messages.

15 In this case you're not just going to see violent
16 ISIS propaganda videos on the co-conspirators' computers and
17 on their phones. You're also going to see it on the
18 defendant's computer, his Acer computer.

19 On or before April 21st, downloaded onto that
20 computer, was a video called Flames of War. It was played.
21 It's a 55-minute video that is an important recruitment video
22 for the organization. It was set out in September. And it
23 portrays the Islamic State's version of history. It also
24 glorifies these jihadist videos or these jihadist fighters and
25 it glorifies their fight and killing disbelievers. It's in

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 English.

2 And in this video it shows the murder of six
3 different victims who it films them digging their graves and
4 then at the end, shows their lifeless body in the grave that
5 they had dug.

6 A person -- an English voiceover, in essence, tells
7 America that they are next.

8 On April 23rd, two days later, Simpson tweeted out
9 about the Draw the Prophet Muhammad Contest. In particular,
10 he tweeted because there were so many submissions, drawings
11 for the contest, that the contest had announced that they were
12 going to have more prizes. And he tweeted out, "Will they
13 ever learn?"

14 You're going to hear that when the defendant spoke to
15 the FBI he lied and he said that he wasn't in contact with
16 Simpson before the attack.

17 You will hear testimony in this case the Thursday
18 night, just days before the attack, that the defendant was
19 seen in a restaurant picking up food to go with Simpson.
20 You'll also hear evidence of them at the mosque together the
21 next day.

22 Ladies and gentlemen, you're going to hear evidence
23 in this case from experts. You're going to hear evidence in
24 this case from civilian witnesses; children, friends and
25 family of the defendant, and his co-conspirators. Some of

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 these witnesses have checkered backgrounds and some do not.
2 Some of these witnesses are in custody right now on unrelated
3 charges. And when they sit here before you, they will be in
4 stripes. You will take all of that into account at the end of
5 this case.

6 You're also going to see hard evidence in this case.
7 You're going to see the defendant's own hard drive. We have
8 talked about the computer, the Lenovo computer from 2012, and
9 also the thumb drive that was sticking into it.

10 You will see that there are violent jihadi videos and
11 propaganda material in three separate places; so the computer
12 from 2012, the thumb drive sticking into it, and the
13 defendant's Acer computer from 2015.

14 On that computer from 2012 and the thumb drive you
15 are going to hear evidence of a course that was on it. A .pdf
16 document about a course that teaches individuals how to act
17 securely on the Internet in order to evade police detection.
18 You're also going to hear information about articles about
19 killing civilians and how to target mass groups of civilians
20 in order to inflict the greatest amount of damage. You are
21 also going to see the Acer and you're going to see the Flames
22 of War video.

23 Ladies and gentlemen, in this case the defendant and
24 his co-conspirators obsessed over a now-dead Muslim cleric by
25 the name of Anwar al-Awlaki. In this case you will probably

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 hear more than you probably thought you would about Anwar
2 al-Awlaki. He is a man whose sermons preached and prayed that
3 Allah would destroy the United States.

4 The evidence in this case is going to show that the
5 defendant and his co-conspirators were obsessed with Anwar
6 al-Awlaki and they were focused by his political agenda; the
7 overthrow of the United States government and encouraging
8 martyrs to commit jihad and kill Americans.

9 That, there, is Anwar al-Awlaki. And you are going
10 to see evidence of Anwar al-Awlaki on the defendant's laptop.
11 You're are going to see it on Soofi's phone, a phone that he
12 picked up on the drive from Phoenix to Texas to conduct the
13 attack, the 65-page sermon he downloaded. You are also going
14 to see it on a list of scholars that Simpson left behind and
15 handed to a 17-year-old boy on the evening before he and Soofi
16 took off and drove to Garland.

17 I want to take a minute and talk about ISIS. This
18 case is about a conspiracy to conduct an attack on U.S. soil
19 to promote ISIL. And you are going to hear that these men
20 were planning an attack on U.S. soil. I have talked about
21 Garland specifically. In this case you are going to hear
22 about different plans of attack and the fact that the
23 defendant and his co-defendants finally settled on Garland.

24 The defendant and his co-conspirators were followers
25 of ISIL. And you're going to hear a lot of information about

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 it, but I want to give you a quick snapshot.

2 ISIL is an organization that has been around for
3 years, a few years. Back in 2010 they started to be led by a
4 man by the name of Abu Bakr al-Baghdadi. He is pictured here.
5 Abu Bakr al-Baghdadi in the summer of 2014, on June 29th of
6 2014, stepped forward and announced himself to be the "Caliph"
7 or the "Khalifa." And what that is is the commander of the
8 faithful, the commander of all Muslims.

9 It's a unique concept to ISIS, because other
10 terrorist organizations, al-Qa'ida included, do not believe
11 that presently there is a Khalifa. And they certainly don't
12 believe that Abu Bakr al-Baghdadi is the Khalifa, presently
13 the commander or the leader of all Muslims. It's a belief
14 specific to the Islamic State.

15 You are going to hear about their agenda. Their
16 commitment to purifying the world by murdering nonbelievers.

17 Over the past couple of years ISIS has seized up
18 territory in Iraq and Syria, territory greater in size right
19 now than the United Kingdom and they are purging, destroying,
20 killing nonbelievers.

21 The Islamic State believes that they are awaiting the
22 end of times, a battle to end all battles that's going to
23 happen in a place called Dabiq, Syria, where they are going to
24 fight the West, the disbelievers, become victorious, and then
25 that's going to usher in a period of Apocalypse.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 The Islamic State is not al-Qa'ida but they do come
2 from a splinter group of al-Qa'ida. So, therefore, they have
3 some same, similar theories and roots. You're going to hear
4 that there are some within ISIS that hold Osama bin Laden,
5 obviously the commander of al-Qa'ida, to be an honorable
6 person, somebody that they respect.

7 Social media. The social media wing of ISIS is also
8 a unique facet of this particular terrorist organization.
9 They have created a propaganda machine that puts forward in an
10 unprecedented race, in a unique way, very high-quality videos
11 of death and killing.

12 They put out onto the Internet almost daily
13 assassinations, killings of individual people. But unique to
14 the Islamic State, they also put forward videos of
15 assassinations of mass groups of people, men in black with the
16 flag of ISIL, killing, beheading, shooting, hurting prisoners,
17 people who are dressed in orange, which you will hear is a
18 play on the prisoners from Guantanamo Bay.

19 And another facet of this particular group, they
20 utilize Western recruiters or propagandists, English-speaking,
21 charismatic, articulate individuals who seek out homegrown
22 terrorists in the United States and other countries.

23 There has come to be an awareness since 2010 and 2011
24 amongst violent jihadi terrorist organizations that creating
25 another 9/11 is very challenging and it's easier to inspire

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 and recruit extremists who are already located within that
2 particular country.

3 Talking about Twitter for a moment. In this case,
4 ladies and gentlemen, you are going to see more tweets than
5 you can shake a stick at, but I want to give you a brief
6 preview of some of the ones that you will see.

7 The first. We talked about this a couple of minutes
8 ago. This is a tweet, a message sent out as the evidence will
9 show from Simpson. The image right there in that box is a
10 picture of Anwar al-Awlaki and the message:

11 "When will they ever learn? They are planning on
12 selecting the best picture drawn of Rasulullah (saws) in
13 Texas."

14 That's the Muhammad. The Prophet.

15 One more. This tweet was sent out from Simpson just
16 minutes before; sixteen minutes before the attack in Garland.

17 Again, another picture of Anwar al-Awlaki.

18 "Shariah is Light."

19 "The bro with me and myself have given bay'ah to
20 Amirul Mu'mineen. May Allah accept us as mujahideen. Make
21 dua."

22 Meaning, the brother with me and myself have given
23 allegiance to the Admiral Mu'mineen.

24 That is Abu Bakr al-Baghdadi.

25 "May Allah accept us as mujahideen."

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Or jihadists.

2 You are going to see other hard evidence in this
3 case. We talked earlier about the weapons that the
4 defendants, co-conspirators brought. You are going to hear
5 evidence about how that weapon, top row on the right with the
6 36 next to it, the AK-47 pistol grip, was the weapon the
7 defendant purchased for Simpson.

8 And then on the bottom in the middle with the 34, the
9 Elk River AK-47 was the weapon -- 74 -- was the weapon that
10 the defendant purchased for his other co-conspirator Nadir.

11 You will also hear evidence that some of the
12 ammunition that was used in the Garland attack was purchased
13 with the defendant and Simpson together. It was found at the
14 scene. And a month after the attack, some of the same
15 ammunition was also found in a safe in the defendant's closet
16 in his bedroom.

17 You will hear FBI experts testify in this case from
18 the lab in Quantico and they will testify about forensic
19 analysis that was conducted on the shell casings found at the
20 Wittmann scene, that desert scene, the place where Sergio took
21 the defendant and he brought his co-conspirators to shoot.
22 You will hear how the shell casings there match shell casings
23 found at the scene in Garland, Texas.

24 The defendant helped train his co-conspirators with
25 the same weapons that his co-conspirators used in the Garland

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 attack. This case, ladies and gentlemen, ends in a shootout
2 in a parking lot. And you are going to hear from the heroic
3 law enforcement officers who were able to stave off the
4 attack.

5 You are going to hear from Bruce Joiner. Bruce
6 Joiner was the unarmed security guard who first encountered
7 the defendant's co-conspirators as they drove into that
8 parking lot in Garland, Texas. You are going to hear how he
9 looked as Simpson and Soofi got out of their car, got out with
10 long rifles in their hands.

11 And then he looked at Simpson, the passenger, and he
12 was smiling. And as he looked at his smile, he thought that
13 it must be a joke. And then he heard the shots. As he heard
14 the shots, he saw the passenger and the driver move to the
15 back of the car that they came in and Joiner instinctively
16 dove. He dove behind a tree. With the intensity of the
17 moment, he didn't even realize that he had been shot.

18 You will also hear from Officer Stevens. Officer
19 Stevens who, in using his service pistol, was able to take
20 down Simpson and Soofi who were armed with semi-automatic
21 weapons and other weapons. You see here in this picture the
22 car and you see Simpson and Soofi. You also see the Elk River
23 drum magazine, the Elk River rifle that the defendant bought
24 for Soofi and you see that AK-74 that the defendant bought for
25 Simpson.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Shortly after the attack, the Islamic State claimed
2 responsibility. "The two brothers attained shahdah in Texas.
3 O Kuffar know that death is better than living humiliated.
4 Allahu Akbar. Hash tag. Garland shooting."

5 The defendant is charged with five crimes and I want
6 to take a minute and walk through them.

7 Count 1 and Count 2 relate to the same type of
8 offense. It's the interstate transportation of weapons with
9 the intent to commit a felony.

10 It's a crime to take weapons across state lines with
11 the intent to commit a felony. The government will prove that
12 Simpson and Soofi carried their weapons from Phoenix to
13 Garland, Texas, in order to murder people in Garland and that
14 when they left, they had the plan to do just that. And that
15 the defendant knew that Simpson and Soofi had that plan and he
16 agreed to help them carry it out.

17 Count 1 relates to the agreement.

18 Count 2 is the act of aiding his co-conspirators
19 before they left in their plan of transporting these firearms
20 with the intent to commit a felony.

21 Count 3. The defendant is charged with material
22 false statements. Lies to the FBI.

23 You will see in the count it lists five lies and
24 we'll go through them one by one.

25 The first: That the defendant did not go shooting in

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 the desert with Simpson and Soofi before May 3rd of 2015.

2 A second lie: Before May 3rd of 2015, neither
3 Simpson nor Soofi fired the weapons they used in connection
4 with the attack in Garland, Texas.

5 Third lie: Simpson and Soofi did not ask him, the
6 defendant, to participate in an attack of any kind on or
7 before May 3rd of 2015.

8 Fourth: That the defendant did not know in advance
9 that Simpson and Soofi planned to conduct an attack in
10 Garland, Texas.

11 And the fifth lie: That the defendant did not know
12 that the Muhammad Art Exhibit and Contest that was to take
13 place in Garland, Texas, on or about May 3rd of 2015, that he
14 didn't know about it until after it occurred.

15 That's the fifth lie.

16 Ladies and gentlemen, in this case you only need to
17 all agree on one lie. Certainly, the evidence will show, all
18 five, but in the jury deliberation room just need to find and
19 agree upon one.

20 Fourth charge. The defendant is charged in Count 4
21 with being a prohibited possessor in possession of a firearm.

22 The government will prove to you that the defendant
23 was convicted of a felony. That he -- after he was convicted
24 he was found in possession of a firearm and that weapon at
25 some point had traveled from one state to another.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Last, Count 5. The defendant is charged with a
2 conspiracy to materially support the Islamic State. The
3 defendant helped Simpson and Soofi. The defendant knew that
4 Simpson and Soofi were followers, supporters of ISIS, and he
5 agreed to help them carry out an attack in support of ISIS.

6 The crime is the agreement, not the act of the
7 attack. The defendant bought Simpson and Soofi weapons. The
8 defendant trained them with their weapons. The defendant
9 taught Simpson and Soofi how to break them down, clean them,
10 lubricate them, and reassemble them. And the defendant
11 motivated Simpson and Soofi to make the attack.

12 Ladies and gentlemen, I'm going to end where I began.
13 The defendant was the third man of a team set on mass murder.
14 Each had their role. Two were killed and one remains.

15 After the evidence has come from that witness stand,
16 we will stand before you again and ask you to find the
17 defendant guilty as charged.

18 Thank you.

19 THE COURT: Thank you, Ms. Brook.

20 Ladies and gentlemen, we will take our afternoon
21 break. We will reconvene in 20 minutes at 2:35.

22 You are reminded of the admonition not to discuss the
23 case among yourselves or with anyone else.

24 You are not to form any conclusions about the case
25 until you have heard all the evidence and begun your

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 deliberations.

2 Court is in recess for 20 minutes.

3 (Recess taken at 2:13 p.m.; resumed at 2:38 p.m.)

4 THE COURT: Thank you, ladies and gentlemen.

5 Please sit down. The record will show the presence
6 of the jury, counsel, and the defendant.

7 Mr. Maynard, you may make your opening statement.

8 **OPENING STATEMENT: Defense**

9 MR. MAYNARD: Thank you, Your Honor.

10 Good afternoon, Ladies and Gentlemen of the Jury.

11 I want to introduce you to Mr. Abdul Malik Abdul
12 Kareem. Born in Philadelphia he was Decarus Thomas. His
13 father was a police officer. This is the man that the
14 government has accused of all of these heinous crimes.

15 Go ahead and sit down.

16 On May 1st of 2015 he had a cousin that was -- or a
17 nephew that was flying back in here from Philadelphia. His
18 nephew had worked with him before. He owned a moving company.
19 His nephew was coming back to have a job with him.

20 His other nephew that actually lived out here in
21 Phoenix went to pick up his brother at the airport and about
22 one o'clock in the afternoon they went to the mosque, one of
23 the mosques here in Phoenix, and they prayed. And on Fridays
24 for Muslims is like Sundays for Christians. It's the day of
25 prayer for maybe an hour-and-a-half.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Afterwards, his nephew was going back to his house to
2 live with him because his nephew was coming out here to work
3 with him. His nephew had been in Philadelphia since I believe
4 it was November of 2011. His nephew used to work with him
5 before, but his problem was his nephew was a very devout
6 Muslim. And at that time -- this was Decarus Thomas -- and he
7 would not let his nephew kneel during the middle of the day to
8 pray when they were working, so his nephew got mad and had
9 gone home.

10 In the meantime in 2013, Decarus converted to Islam.
11 He changed his name to Abdul Malik Abdul Kareem. So the
12 nephew is coming back to live with him and work with him.

13 They see each other at the mosque. They also see a
14 number of other people. They see Simpson and they see Soofi
15 there. And Malik invites a lot of people over that night for
16 dinner. He's going to cook. In fact, he's going to cook a
17 goat.

18 But as the day goes on, he has a medical appointment
19 that he has to go to and he realizes he can't buy the meat and
20 get everything prepared for that night, so he calls Simpson,
21 texts other people, and tells them I'm not going to have the
22 dinner until tomorrow night, which is going to be May 2nd.

23 This is the person that is the bank roller, trainer,
24 and motivator, according to the government.

25 You need to understand that Phoenix, Arizona, to

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Garland, Texas, is over a thousand miles.

2 The next day he prepares the food -- actually
3 prepares it that night. He has a number of people that come
4 over to have dinner and lunch with him. Simpson sends him a
5 text and you are going to see the text and it says: I'm sorry
6 I'm not going to be able to make it. And you're going to have
7 to decide whether or not this was all a ruse; Simpson saying
8 "I can't make it."

9 On May 3rd in the evening, the government is exactly
10 right as to what happens with Simpson and Soofi. They
11 initiate some sort of an attack in Garland, Texas, at this
12 Muhammad Drawing Contest.

13 What you're going to hear from not only my client, he
14 said this over and over to the FBI, but you're also going to
15 hear it from people in the Muslim Community here. This was
16 not a well-known event. There were not 200 people at this
17 Muslim drawing contest, this Muhammad drawing contest, there
18 were 160. It got notoriety after this event occurred. Okay.

19 Malik is sitting in a Red Lobster restaurant that
20 night with his nephew and he's having a good time. He's
21 enjoying himself. They have ordered food. They're sitting
22 down and a phone call comes in from his other nephew saying
23 that Simpson' brother has called saying -- because he's being
24 contacted by somebody from the press and they want to know:

25 Do you know whether your brother Elton Simpson is

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 here in Phoenix? Is he in Texas? Is he involved in something
2 in Texas? What's going on?

3 And that information is conveyed to Malik.

4 The reaction that changes on his face that you will
5 hear from his nephew is shock. He has no idea what has gone
6 on. They pack up -- they get the restaurant to pack up their
7 food. They take it and they leave.

8 And his nephew has told him that he has gone by
9 Simpson' house and that there are FBI there and there are
10 agents and there's police officers. So he drives over there
11 to see what's going on. And then he drives to the house of
12 another friend that's good friends with Simpson to see if he
13 knows what's going on.

14 And that friend and Malik and his nephew drive back
15 to Simpson's house. In fact, they see some tarps outside.
16 They think Simpson has been involved in something and that
17 maybe he's dead and he's lying on the ground out there. They
18 don't know anything about Garland, Texas.

19 Later that evening he goes to Simpson's father's
20 house trying to find out what's happened.

21 Now, through the course of the next couple of weeks
22 and starting the next day, the FBI has a very large
23 investigation going on and they start interviewing lots of
24 people who knew Simpson and Soofi at the mosque that they
25 attended.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 They interview people that they worked with. They
2 interviewed anybody around there. You're going to hear from
3 the government. They'll talk about how they went into
4 Simpson's and Soofi's apartment and what they found there.

5 And that's going to be really important to look at
6 what was on Simpson and Soofi's computers, their cell phones,
7 in their apartment, because then they call Malik, the FBI
8 does, and they ask him to come into the FBI office for an
9 interview and he comes involuntarily and he's interviewed with
10 them.

11 And that's the interview that they have now charged
12 him with lying to the FBI. And I would love to show you the
13 videotape of the interview because the FBI had surreptitiously
14 put in a camera and a recorder so that they could record it so
15 you would know exactly what he said.

16 But somehow or another it either didn't get turned on
17 or got destroyed but we don't have that videotape. All we
18 have is the word of the two FBI agents that were in there who
19 thought that they were videotaping this.

20 Well, and then there was a camera up in the corner, a
21 security camera. And as the judge will tell you, one of the
22 things you do is when you listen to witnesses, you not only
23 listen to what they say, but you watch them. And you tell --
24 are they telling the truth? What's their body language like?

25 And I would love to show you that video of the

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 interview with the FBI with Malik but the FBI destroyed it.
2 Said: I don't have it.

3 Now, I do have an interview that takes place on June
4 10th when they finally arrest him because he doesn't lawyer-up
5 at the time. He sits down and tells them what he knows. And
6 you'll see that and you'll hear that.

7 But let's go back a little bit and talk about why
8 this all came about. My client who the government says is the
9 bank roller, the trainer, the motivator, apparently the leader
10 of this thing, adopts Islam in 2013.

11 Elton Simpson, he became a Muslim in 2004. You're
12 going to hear evidence that starting in about 2005, 2006, the
13 FBI thought that Simpson was becoming radicalized. And over
14 the course of the next four or five years they paid \$140,000
15 to a Somali informant to tape Simpson's conversations. Took
16 four or five years for them to do this. And then they finally
17 bring charges against him in 2009 and he goes to trial in 2010
18 and the judge decides that he's lied to the FBI but not about
19 terrorism.

20 Okay. So Simpson then is on probation. Malik
21 doesn't meet Simpson until 2011 and doesn't know anything
22 about this trial that's gone on. He's not a practicing Muslim
23 at the time. He's dabbling in it. He's looking at it. He's
24 going to the mosque on occasion. But he hasn't converted. He
25 hasn't changed his name.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Now, he moves in -- and the government just told you
2 in their opening -- he moved in with Simpson and another guy.
3 Well, he moved in with Simpson, another fellow, Abubaker
4 Ahmed, and there was a fourth individual that was there.

5 And the government does a raid on this house in 2012
6 because they think that Abubaker Ahmed is making false
7 certificates for the ASU graduation certificates.

8 But I believe it was a pretext because I think the
9 evidence is going to show they went in and they got
10 everybody's computer about this and they got my client's
11 computer and when they interviewed him he said, yes, this is
12 my computer. The evidence is there are other people in this
13 house that use my computer. And there's a flash drive in that
14 computer. He said it's not mine. I don't know whose it is
15 but that flash drive is not mine.

16 And there is a great deal of radical material on that
17 flash drive and that's going to be one of the questions that
18 you're going to be asked in this case is who owned the flash
19 drive and was it his? Or is this the kind of material that
20 was found all the time on Simpson's stuff?

21 Now, the government just told you in the opening that
22 the evidence would show that they had a falling out at that
23 point and that they moved apart in 2012. It didn't happen.
24 They moved to another apartment in 2012. He continued to live
25 with Simpson. Simpson was his friend. Was his buddy.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 And they lived together until the summer of 2013.
2 Now, in the summer of 2013, he and Simpson did have a falling
3 out and he believed that Simpson had put some sort of a
4 tracking device on his car or something and so he told
5 Simpson, look, I don't want to be around you. I don't want to
6 be involved in this kind of stuff. You've got to leave. And
7 Simpson left and they never lived together after the summer of
8 2013.

9 Now, this person who is alleged to be this
10 mastermind, bank roller of this terrorist plot, who does he
11 now start living with? Well, he brings in some young Hispanic
12 boys that worked with him on his moving company. He brings in
13 a Vietnam war vet who's a Christian named Billy Elliott.
14 Billy Elliott is going to come in here and testify.

15 I'm going to tell you right now you're going to have
16 a hard time listening to Billy Elliott because he only has
17 half a lip. He got it bitten off at some point. And they're
18 going to testify about what he was like from 2013 to 2015.

19 They lived together -- he and Elliott lived together
20 through that whole period of time -- and they're going to tell
21 you there's no radicalization things going on. He's not
22 watching the kinds of things the government argues that he's
23 watching.

24 There's no question that you're going to hear some
25 evidence from some people that are going to say that he was

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 doing radical things. You're going to hear an individual say
2 that he asked him to build a pipe bomb.

3 What I tell you to do is just wait till you hear the
4 evidence and keep an open mind till you hear the
5 cross-examination. You need to look at the motivation behind
6 what these people say. You need to look at the timing of what
7 they say. You need to look to see if they're really telling
8 the truth.

9 Now, the government showed you pictures of Anwar
10 al-Awlaki, a picture that Simpson had on his Twitter page.

11 There will be evidence that my client listened to
12 some CDs of Anwar al-Awlaki. But there will also be evidence
13 that shows that Anwar al-Awlaki was an American-born cleric.
14 His father was an engineer. He was born while his dad was in
15 school over here. And he was an Imam in California for a
16 while and he was an Imam in Falls Church, Virginia, and he
17 made a lot of videos that were about the Prophet and the
18 Qur'an and those types of issues.

19 And you are going to hear evidence from a number of
20 Muslims that the large percentage of the American Muslim
21 population listened to those CDs. There's no question that
22 later on al-Awlaki became radicalized and he did produce CDs
23 later on that are about terrorism and radicalization. And
24 he's the first American that was ever killed and authorized to
25 be killed in a drone strike by the United States.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 But the DVDs and the CDs that my client had are not
2 those. It's the ones that were at the very beginning in his
3 non-radicalized period.

4 In 2014 my client again begins to get friendly again
5 with Simpson. Let me make it clear. Did he go out into the
6 desert shooting with Simpson? Yes. On two occasions. All
7 right. Two occasions. Both times were with a man by the name
8 of Sergio Martinez.

9 He took Simpson with him to Sergio Martinez's house
10 for a birthday celebration. There are numerous members of
11 Sergio Martinez's family there. It's Sergio Martinez's
12 mother's house. Everybody is out shooting guns in the
13 backyard. There is nobody doing any training on how to shoot
14 a gun. He's not training anybody. He's not providing the
15 guns. Simpson happens to be there at a birthday party.

16 And I hope the government brings in Sergio Martinez.
17 If not, I will, and you'll hear that testimony.

18 Now, in January of 2015, he calls Martinez again and
19 says, look, I've got a couple of friends that want to shoot
20 guns. Can we come out and shoot? And Martinez says, yes.

21 So they go out there to shoot at Martinez's house
22 again. And Martinez gets his two boys who I think are 6 and
23 8, puts them in the car, and they all go out into the desert
24 shooting.

25 And you're going to have to decide whether or not

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 this is somebody training radicals to do an attack in January
2 of 2015, if they would call their Christian/Hispanic friend
3 with his two children and go out shooting.

4 And as the government just told you a few minutes
5 ago, he's laughing. He's laughing with Martinez because Soofi
6 and Simpson each have AK-47s. He's never shot one before.
7 Neither has Martinez. And they're laughing because these guys
8 don't know what they're doing. Martinez has got -- he's not
9 training them. This is an over-active imagination by the
10 government.

11 What happens after this is that he has conversations
12 with Simpson and Soofi but they're not living together. He
13 has a business to run. He has homeless people that are living
14 at his apartment with children there. This very alleged
15 devout Muslim who's going to do these terrible things has all
16 of these homeless Christian folks along with Billy Elliott and
17 others living with him.

18 Now, the government has told you just a few moments
19 ago that there are 380 contacts over the phone between the two
20 of them. There may have been 380 calls but there weren't 380
21 connections.

22 Again, you're going to hear an awful lot of evidence
23 both from the government and from the defense on the number of
24 phone calls that were done, how many of them were actually
25 connected, and you're going to get a lot of information about

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 texts and text messages that were sent.

2 Those text messages are really important because
3 social media in this case is going to be very, very important.
4 The government has some witnesses that are going to come in
5 and testify that my client would go out every Friday with
6 Simpson and Soofi shooting in the desert. It didn't happen.

7 You're going to look at these telephone records to
8 see where they were traveling to to see if Simpson and Soofi
9 were even with my client, with Malik. Did they go into the
10 desert? Did they ever go into the desert where these
11 individuals said they were going shooting on a Friday, the
12 holy day, the Sabbath day for the Islamic religion?

13 There are going to be some children that testify in
14 this case. And let me tell you ahead of time, watching
15 children testify about things can be very difficult.

16 I believe that the really difficult one in this case
17 will be Nadir Soofi's son. He was interviewed by the FBI.
18 He's been videotaped. I'm assuming he is going to come in and
19 testify. It's hard watching an 8 or 9-year-old son testify
20 about his dead father, especially when he knew exactly what
21 his father was going to do. And his father was teaching him
22 at that age to shoot a gun.

23 You're not going to hear any evidence from Nadir
24 Soofi that my client was involved whatsoever or from Nadir
25 Soofi's son. But that son is going to implicate his father.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 He's going to talk about Simpson. And he's going to talk
2 about Ali.

3 And you heard the government tell you about what Ali
4 is going to come in here and testify. It will be interesting
5 to see what Mr. Ali says -- or Ali Soofi says -- because Ali
6 Soofi's testimony has changed dramatically over this. He is
7 interviewed on May 4th, the day after his brother is killed.
8 As days go on his testimony just starts changing.

9 Why? It's going to be for you to decide after you
10 hear cross-examination. You look at time lines and you look
11 at the evidence in this case.

12 Did he know more than he knew and he's letting on?
13 He lived with them. He lived with Soofi and Simpson. And
14 there's no question they carried out a terrorist act.

15 You are not going to hear anything from the defense
16 that this was not an act of terrorism by Soofi and by Simpson.

17 But one of the other things the government didn't
18 mention to you is that hours -- hours before the attack
19 occurred in Garland, Texas, the FBI is sending e-mails to
20 Garland, Texas, with Simpson's picture on it. Because somehow
21 or another, they believe that he may be involved in an attack
22 up there. But it appears that somebody at the government
23 forgot to open the e-mail so they didn't distribute it to
24 everybody there.

25 Are some people embarrassed about what happened? I

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 think so. Are they trying to blame somebody else? You'll
2 decide.

3 This is a case where it is really guilt by
4 association. He's there. He went shooting with them. He did
5 go to the mosque that they went to. He was a friend of
6 Simpson's.

7 But you need to look at the evidence in this case,
8 and particularly, the electronic evidence. Not just what
9 people say, but when we look at electronic evidence, when we
10 go in and look at the computers, look at Simpson's computer,
11 what did he have on it? Lots and lots and lots of radicalized
12 material, things that promoted terrorism.

13 When we look at Soofi's cell phones and his computer,
14 the one that he shared with Simpson, lots and lots of
15 radicalized information and terrorist information.

16 When you look at Malik's computer and his cell
17 phones, you're not going to find that. You might find one or
18 two things, but nothing. They look completely different.

19 Now, the government has just now told you that he's
20 basically the mastermind. He's the money man. He's the
21 trainer. He's the motivator.

22 After you have listened to all of this evidence, I
23 believe that you'll come to the conclusion that my client was
24 friends. He had no idea they were going to do this. He had
25 no idea that they were going to Dallas, Texas.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Let me talk briefly, just briefly, about the
2 different charges because Count 1 and 2 and Counts 5 deal with
3 that trip to Garland, Texas, where that act of terrorism took
4 place. Okay.

5 The count that deals with whether he lied to the FBI
6 or not, you're going to have to make that decision. I wish I
7 had that video to show you. I wish we knew exactly what he
8 said. He certainly has always denied that he knew they were
9 going to Garland, Texas, or that they asked him to go to
10 Garland, Texas, or he knew they were going to do anything like
11 that.

12 When it comes to the issue of whether or not he is a
13 felon in possession, the evidence is going to be clear. All
14 right. He doesn't have one felony conviction. He has two.

15 Back over ten years ago in about a four-year period
16 he got two felony DUIs. All right. Those are the felonies
17 that he had. He should not have possessed a gun. And the
18 evidence is going to show that he carried a gun all the time.
19 He had a .38 and he had a 9 millimeter.

20 It's going to be clear. And he carried that .38
21 because he had a moving business and he would go and there
22 were times when he had been threatened.

23 Should he have carried it? No. Did he? Yes.

24 At the close of this case all I'm asking you to do
25 now is keep an open mind. Listen to the examinations. Pay

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 careful attention to the electronic information in here, the
2 hard evidence that we can see. Pay careful attention to the
3 cross-examinations and look at people's credibility and
4 whether they're telling the truth.

5 And I suggest to you that a large number of the
6 government's witnesses are not telling the truth.

7 Thank you.

8 THE COURT: Thank you, Mr. Maynard.

9 The government may call its first witness.

10 MR. KOEHLER: Thank you, Your Honor. The United
11 States calls Bruce Joiner.

12 If I could retrieve Exhibit 1 from the clerk, please?

13 THE COURT: Sir, please come forward and be sworn.

14 **(Witness duly sworn)**

15 THE CLERK: Please state your name for the record and
16 spell your last name.

17 THE WITNESS: Bruce David Joiner. J-O-I-N-E-R.

18 **BRUCE DAVID JOINER, WITNESS, SWORN**

19 **DIRECT EXAMINATION**

20 BY MR. KOEHLER:

21 Q Good afternoon, sir.

22 A Good afternoon.

23 Q Would you please introduce yourself to the jury and tell
24 them where you work.

25 A I'm Bruce Joiner. I work at Garland Independent School

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 District. It's a school district that has three cities there
2 in the Dallas area of Texas.

3 Q What do you do for the Garland Independent School
4 District?

5 A I work in their Security Department. And you want me to
6 elaborate a little or?

7 Q What do you do working in their Security Department?

8 A Thank you. Basically, we're almost like a police
9 department, except that because we're security, we are not
10 armed and we patrol the schools after hours. And we're in the
11 schools during hours, checking doors, making sure they're
12 locked, looking for safety issues, and that kind of thing.

13 Q You mentioned that because you're security, you're not
14 armed. Is someone who is not a sworn law enforcement officer
15 permitted to carry a gun on any form of school property in the
16 State of Texas?

17 A No. They are not allowed.

18 Q Were you in the past at times acting as a sworn police
19 officer?

20 A Yes.

21 Q During what time frames were that and what jurisdictions?

22 A From 2001 to 2005 I was at Baylor Healthcare Systems which
23 is a private healthcare system that had their own police
24 department. And then after that, I was with the City of
25 Rowlett for about six months.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Q Can you please spell "Rowlett" for our court reporter?

2 A Yes. R-O-W-L-E-T-T.

3 Q Thank you.

4 Now, you mentioned that you work as a security guard
5 for the Garland Independent School District; is that right?

6 A Yes.

7 Q Were you working on May 3 of 2015?

8 A Yes, I was.

9 Q Where were you assigned that day?

10 A I was assigned to the parking lot duties, specifically,
11 the entrance for the VIP speakers and hosts of the event, as
12 well as any workers that would be coming in and out.

13 Q I would like to switch the witness's monitor to the
14 document camera, please.

15 Sir, do you recognize what is here on Exhibit 1?

16 A Yes.

17 Q Can you tell the Court and jury what that is?

18 A That is the west parking lot of the Curtis Culwell Center.

19 Q Is that where this event was being held?

20 A Yes, sir, in the conference area.

21 Q And does this photograph fairly and accurately depict an
22 overhead view of the Curtis Culwell Center and the west
23 parking lot?

24 A Yes.

25 MR. KOEHLER: Move to admit Exhibit 1 and publish.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 MR. MAYNARD: No objection, Your Honor.

2 THE COURT: One is admitted.

3 (Exhibit No. 1 admitted in evidence.)

4 BY MR. KOEHLER:

5 Q The monitor that's in front of you has a touch screen.

6 A Okay.

7 Q Can you please use the touch screen there and draw a
8 circle in the area of the parking lot where you were
9 stationed?

10 A The entry. (Indicating)

11 Q And what time did you start your service there at the
12 entry to the parking lot?

13 A I think we arrived around 12:00 and I began at that
14 station at one o'clock.

15 Q What is the name of the road that is running along the
16 parking lot there?

17 A Naaman School Road.

18 Q And what was your assigned duty there at the parking lot?

19 A Basically, it was to screen anybody coming in, making sure
20 that those that were regular attendees of the event didn't get
21 into the parking where we were only allowing the workers and
22 the security detail vehicles, as well as the speakers and
23 hosts of the event.

24 Q Looking at the photograph, your circle is more or less in
25 the top upper half and center of the photograph going left to

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 right, correct?

2 A Say that again? I'm sorry.

3 Q Your circle is a little bit above center?

4 A Yes.

5 Q And a little bit to the left of center?

6 A Right.

7 Q Looking left to right.

8 Looking at that photograph, which direction was the
9 main parking lot?

10 A The main parking lot was to the right, so it was farther
11 down to the right of the monitor.

12 Q And during the course of the day, did you have vehicles
13 approach you coming along Naaman School Road?

14 A Yes, we did. We had several vehicles that day. I'm not
15 sure how many, at least 20 that would -- some of them actually
16 pulled into the driveway and stopped and asked us questions,
17 others slowed down and rolled down their windows and asked
18 questions. And most of the time it was somebody going to the
19 other parking area.

20 Q To the main parking area?

21 A To the main parking area.

22 Q Did you also have people come through there --

23 First off, was there someone with you at that
24 location?

25 A Yes.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Q And who was with you?

2 A Officer Greg Stevens with the Garland Police Department.

3 Q And looking at the photograph there, did he have a vehicle
4 with him?

5 A He did. His vehicle was actually parked inside of the
6 sidewalk. If you can imagine the line of the sidewalk, he
7 parked his vehicle across the -- kind of the exit-side of that
8 entrance.

9 So right on this side right here (indicating) he has
10 blocked off half of the circle -- I mean the entrance -- with
11 his vehicle. And so we're kind of standing. We have cones
12 and we're standing, pretty much taking advantage of the shade
13 from those trees that are there. So we were in around there.

14 And then we would approach a vehicle as it stopped
15 and answer any questions and direct them. If they were
16 workers or something like that, then we removed the cones and
17 let them pass through.

18 Q Do you recall how many people you had come into the VIP
19 section of the Culwell Center, roughly?

20 A There were only two really big entourages. One was the
21 host Emily Geller and her group. The second was the speaker.
22 I don't really know him, but his entourage came through.

23 The rest were workers. And they had actually had
24 early on in that afternoon an orientation for some new workers
25 that came and left before the event. So probably in all that

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 day there was probably 30 or 40 people that we had let in
2 their -- vehicles, I should say -- but most of those were gone
3 before -- because they were there for the workers'
4 orientation.

5 Q Do you recall how big the two groups were that were with
6 Ms. Geller and the speaker?

7 A I would say at least three SUVs each.

8 Q And each one of them fully loaded?

9 A They were tinted. I mean, I would assume that they were
10 pretty well fully loaded.

11 Q All right. Very good.

12 Do you remember what the event was that was being
13 held there at the Culwell Center that day?

14 A Yes. It was a Draw the Prophet Contest.

15 There was a prize. They had a speaker from Holland
16 who spoke in opposition to Islam.

17 Q All right. Do you remember about what time that event was
18 letting out?

19 A It was about 6:40 or so. I think when we got a radio
20 transmission that they had awarded the prize money and that
21 they were dismissing the program, kind of a "get ready there's
22 going to be foot traffic and people going to their cars" and
23 stuff like that.

24 Q And did you start to see a little bit of that foot
25 traffic?

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 A I had just seen a few people. Most of the parking is off
2 of this view. They were not in this parking area that you see
3 here in this camera view and so we did not see very many
4 people, but we did see a few.

5 Q When all this was going on, did something unusual happen
6 near the parking lot?

7 A Yes. We had another vehicle pull up. What was different
8 was it pulled up rather abruptly and stop -- it did not --

9 Q Can you describe the vehicle?

10 A Pardon?

11 Q Can you describe the vehicle, please.

12 A It was a dark-colored sedan. I believe it was a four-door
13 but I'm not sure. It stopped. It just -- just the right nose
14 of the vehicle was actually in the driveway.

15 Q I'm going to change the color so that where you're
16 standing stays there.

17 A Okay.

18 Q If you can go ahead and make a line. I changed it from
19 red to blue. If you would go ahead and make a line in the
20 road where the car pulled up and stopped.

21 Oh, it stayed red. Okay. Well, we'll stick with red
22 then.

23 A Okay. It's actually just a little bit -- I'm not very
24 precise with this, but it's kind of in the -- it doesn't go
25 over the sidewalk, but it pulls in the entrance and kind of

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 that angle. They came from the west and were headed eastbound
2 on Naaman School Road.

3 Q So were they in -- you showed them in the lane that was
4 closest to you.

5 Were they traveling in the correct direction of that
6 lane going toward the right side of the photograph?

7 A Yes, they were.

8 Q And you mentioned they were traveling and they made an
9 abrupt stop. Can you go ahead and describe what happened from
10 there?

11 A Yeah. It's not a high-speed area, but most of the people
12 had kind of eased in there when they pulled in because they
13 were kind of looking for where to go.

14 This car just pulled up and -- it didn't screech to a
15 stop, but it stopped pretty abruptly and both doors just
16 instantly popped open and both the driver and the passenger
17 got out.

18 They had their guns, rifles in their hands at the
19 time, and so it was very different than -- I had actually
20 taken a couple steps towards the vehicle expecting to answer a
21 question about whatever question they had, but then I noticed
22 the guns right away.

23 Q Were you expecting to give them directions or something
24 along those lines?

25 A Yeah. That's why I was approaching the vehicle. I would

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 have never approached it had I thought anything different.

2 Q Did you focus on either the driver or the passenger at the
3 point where they started to come out of the vehicle?

4 A I was on the passenger's side and I focused on the
5 passenger. He had a very kind of surreal-looking smile on his
6 face and it just kind of caught me as one of those moments
7 that I remember.

8 Q Did that smile make you think anything about what was
9 going on at that point?

10 A Yeah. It kind of threw me for a brief second. I thought
11 it might be some kind of prank and that somebody was going to
12 get hurt because, if you know anything about Garland, Texas,
13 they don't play around. And --

14 But as quickly as that thought went into my mind, I
15 realized that this was not a prank.

16 Q What did you do after that?

17 A My best memory is is I dove to the ground and I hid behind
18 the trees over here -- can I still mark this?

19 Q Yes.

20 A So I'm kind of behind this tree here laying on the ground
21 (Indicating).

22 The tree base is just about as big as my head, so I'm
23 just kind of at an angle from where their car is, trying to
24 get as much of me behind a small tree as I can.

25 Q Could you hear anything happen while this was going on?

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 A Yeah. I'm not sure when I picked up on the gunfire. I
2 know I did not hear the initial shots. But once I got behind
3 the tree and peeked out from behind there, then I could hear
4 the shots.

5 I don't know how many shots I heard exactly, but I
6 heard about three kind of bursts of guns. And by then I could
7 hear the police officers giving commands to stop moving. Stop
8 moving.

9 They were also yelling for Officer Stevens, who had
10 kind of wandered out to the back of their car, for him to get
11 back with the other officers behind his vehicle just so there
12 would be no crossfire or anything like that.

13 They actually yelled "cease fire, cease fire" at one
14 point in order to draw him back into the protection of the
15 group and his vehicle.

16 Q What do you remember happening after that?

17 A After that the SWAT vehicle comes, the armored vehicle,
18 they call it "the Cat" came up from the rear. Officers came
19 off of it from off the side of it. They were standing in --
20 there were two more rifle rounds. And from that point on
21 there was no more shooting.

22 Q What happened after the shooting stopped?

23 A After the shooting stopped, I heard a female officer
24 Brandy Johnson, Officer Brandy Johnson call to me and say,
25 "Are you hit?"

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 And I said, "I don't know."

2 And just about as quickly as she asked me that
3 question, I began to feel the burning in my leg. And I looked
4 down at my boot and pulled my pant legs up and said, "Yes, I
5 am hit."

6 Q Where were you struck?

7 A I was struck in the left leg towards the outside between
8 my ankle and my knee, kind of halfway up there. If you're
9 familiar with boots, it would be just above the bootline.

10 Q Were you treated at the scene?

11 A I was treated. They pulled their vehicle around and kind
12 of blocked the area between me and the suspects. Again, they
13 were still thinking that this might have an explosive device
14 with it and they pulled me to the rear of the vehicle. They
15 initially put a triage on my lower leg and then they decided
16 to move it up to my upper leg to triage a tourniquet to triage
17 that.

18 And then from there they took me to the -- what would
19 be the back of the parking lot where an ambulance was waiting.
20 There was an ambulance at the event the whole time.

21 Q And from that point forward you had no further
22 observation?

23 A Once I was in the ambulance, I had no further observation
24 of what went on.

25 Q And were you carried away immediately in the ambulance?

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 A I probably had another five to ten minutes there as they
2 were triaging and getting my vitals. And I had asked them to
3 let me call my wife and to call my boss who was there on the
4 property so that I could tell them that I was okay.

5 And so there was a little delay. I don't know how
6 long exactly before we were headed some place. They had to
7 make a decision about which hospital I would be going to as
8 well.

9 Q After your hospital treatment, did you have any further
10 complications from the injury?

11 A No.

12 MR. KOEHLER: No further questions for the witness,
13 Your Honor.

14 THE COURT: Any questions, Mr. Maynard?

15 **CROSS EXAMINATION**

16 BY MR. MAYNARD:

17 Q Very briefly. Good afternoon, Mr. Joiner.

18 A Good afternoon.

19 Q When you said that the passenger got out and he had a
20 serene-looking smile, was it sort of a goofy look on his face?

21 A No. It was kind of "I gotcha" and I just never had
22 experienced anything like that before.

23 Q And I hope you don't again.

24 A Yeah.

25 Q What about the driver? Did you see any look on his face

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 or did you get to see his face?

2 A Not really. He was moving to the rear of the vehicle. I
3 would describe it as not shielding themselves behind the
4 vehicle, but actually moving just to the rear where the
5 vehicle was.

6 Q Okay. There was a very fast reaction. Was there a lot of
7 security at this particular event?

8 A There was a lot of security at this event. There weren't
9 a lot of security at that particular entrance.

10 Q Where you were?

11 A Right.

12 Q Okay. Can you tell the jury, give them some idea of how
13 much security was there?

14 A I can tell you that -- and I don't know where they were.
15 While we work with the Garland Police Department, they don't
16 divulge all their secrets. But they had snipers on a nearby
17 building that would have been blocked in this case by trees
18 and foliage like that.

19 They had several officers at the other entrance with
20 rifles. They had the SWAT team at the dock waiting. They
21 also had uniformed officers in their vehicles in the parking
22 area patrolling. They had motorcycle officers that were,
23 basically, just making the loop around Naaman School Road and
24 going around and just kept making the loop. And they were
25 checking license plates as they went along just for -- looking

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 for anything suspicious.

2 Q And had you participated in prior days in some meetings
3 where there were discussions about safety and officers and how
4 many there would be there and that kind of thing?

5 A I didn't attend the official meetings that were held with
6 the Garland P.D. and school officials, but I was briefed in
7 our security briefing before the event.

8 MR. MAYNARD: No further questions.

9 THE COURT: Any questions on redirect?

10 **REDIRECT EXAMINATION**

11 BY MR. KOEHLER:

12 Q You mentioned it was a kind of "gotcha" kind of a grin.
13 Can you describe how wide his smile was, if that makes any
14 sense?

15 A I guess just kind of the Cheshire cat grin. If you have
16 seen that, it's just a very wide smile. It was not
17 necessarily -- I don't even remember teeth. It was just a
18 huge grin.

19 And that's why I think initially I thought it might
20 be a prank. But then I thought, no, that's a "gotcha" and he
21 really did have me because I was taking steps towards him.

22 Q Did you see the rifle start to come up at all?

23 A They were messing with the rifles, but honestly, I don't
24 remember other than them probably getting them to the ready
25 position. But my focus was getting to cover. I was unarmed.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 I knew I was unarmed. And I had already picked my spot to be.

2 MR. KOEHLER: No further questions.

3 THE COURT: May this witness be excused?

4 MR. KOEHLER: Yes, Your Honor.

5 THE COURT: Is there any objection?

6 MR. MAYNARD: No, Your Honor.

7 THE COURT: Thank you, Mr. Joiner. You may step down
8 and you are excused as a witness.

9 Mr. Koehler, your next witness, please.

10 MR. KOEHLER: Your Honor, before we go on with our
11 next witness, there is an exhibit we need to discuss with
12 defense counsel if we could take just a couple minute break to
13 do that.

14 THE COURT: No. Call your next witness please.

15 MR. KOEHLER: The government calls Gregory Stevens.

16 MR. MAYNARD: And, Your Honor, I forgot to invoke the
17 rule.

18 THE COURT: Oh, well, we can take care of that.

19 Are there other witnesses that are present?

20 MR. KOEHLER: Not in the courtroom, Your Honor.

21 THE COURT: Outside?

22 We need to get everybody in, Mr. Maynard, and invoke
23 the rule.

24 MR. KOEHLER: We have treated the rule as invoked and
25 all of our witnesses are either downstairs or one waiting in

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 the anteroom.

2 THE COURT: Okay. Let's have any witnesses that are
3 present in the environs of the courtroom come in and we'll
4 swear them and advise them concerning the rule.

5 MR. KOEHLER: Certainly.

6 THE COURT: So while the witness is coming in, the
7 rule we're talking about is called the Rule to Exclude
8 Witnesses, which means that witnesses can't be in the
9 courtroom listening to other witnesses' testimony before they
10 testify. And they're not allowed to talk to each other about
11 their testimony.

12 Nobody else? Okay. Sir, would you please come
13 forward and be sworn.

14 (Witness duly sworn)

15 THE CLERK: Please state your name for the record and
16 spell your last name.

17 THE WITNESS: I'm Officer G.B. Stevens. That's
18 spelled S-T-E-V-E-N-S. It's Gregory Brian Stevens.

19 THE COURT: And since there are no other witnesses
20 present to be advised concerning the requirements of the rule,
21 I'm going to ask that the lawyers advise all of the witnesses
22 as they appear of the requirements of the rule.

23 And we will also post the door so that witnesses do
24 not come into the courtroom until they're called in to
25 testify.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 You may proceed, Mr. Koehler.

2 MR. KOEHLER: Thank you, Your Honor.

3 OFFICER GREGORY BRIAN STEVENS, WITNESS, SWORN

4 DIRECT EXAMINATION

5 BY MR. KOEHLER:

6 Q Sir, would you please introduce yourself to the jury.

7 A I'm Officer Greg Stevens. I'm a police officer in the
8 City of Garland, Texas.

9 Q How long have you been so employed?

10 A Just shy of 38 years.

11 Q What are your day-to-day duties with the Garland Police
12 Department?

13 A I'm assigned to the Traffic Division. Basically, my
14 duties include selective traffic enforcement, accident
15 investigation. In the Traffic Unit we have some specialized
16 training to do accident reconstruction, anything related to
17 traffic escorts, those kinds of things.

18 Q And before joining the Garland Police Department, what did
19 you do?

20 A I was a student and worked part-time for a university
21 police department as a dispatcher. I was not a sworn officer.

22 Q Were you on duty on May 3rd of 2015?

23 A I was.

24 Q What were you doing that day?

25 A I had -- I was working a special assignment at the Curtis

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Culwell Center for an event that was taking place there. It
2 was an extra duty job.

3 Q And do you recall the name of the event that was being
4 held?

5 A I believe it was called the Draw the Prophet Contest.

6 Q Where were you stationed that day?

7 A I was at the west entrance to the Center, to the parking
8 area of the Center.

9 Q Can you tell us what time you started your duty there at
10 the west entrance?

11 A I arrived about -- and checked in with Lieutenant
12 Colasanto about 1:30 in the afternoon.

13 Q Do you recall approximately how many officers were on duty
14 in the vicinity of the Curtis Culwell Center that day?

15 A I would just have to guesstimate probably 30; 25 to 30.

16 Q And was that a normal security profile there at the Curtis
17 Culwell Center for an event?

18 A No. It was a -- it was a little more -- there were more
19 officers than usual because we had some concerns about the
20 event.

21 Q Explain what those concerns were.

22 A Well, the nature of the event -- we had heard -- and this
23 was relayed to me by some supervisory personnel -- we had
24 heard that there were some possible threats to the event due
25 to the nature of it.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 And so as a precaution, we put together a response
2 plan that was certainly not typical of most events that would
3 be held there.

4 Q Was there also private security present at the event?

5 A There were some security personnel for the promoter of the
6 event and also a guest speaker there.

7 Q Do you remember the name of the promoter of the event?

8 A Her name was Pamela Geller.

9 Q And do you remember about how many people she had on her
10 security team?

11 A I don't know the exact number, three or four probably. I
12 only met one, which was kind of the supervisor of her group.

13 Q And what about the speaker?

14 A He had three or four people with him. And I had -- I
15 didn't really visit with them, but I had seen them.

16 Q Do you recall his name by chance?

17 A Wilder, I believe, was his last name. I can't recall what
18 his first name was.

19 Q And where was he from, if you know.

20 A I don't recall. It was in Europe. I don't recall which
21 country it was.

22 Q Was he there to speak at the Draw Muhammad event that you
23 were talking about?

24 A Yes. He was.

25 Q Did there come a point during the day that you took a

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 break?

2 A Just briefly. It was very late in the day. I left my
3 post -- I called some other officers to take my place at my
4 post briefly while I went up to the building itself and I took
5 a rest room break.

6 Q And did you come back to your post immediately after that?

7 A I did.

8 Q And was somebody at your post in your place while you were
9 gone?

10 A They were, yes, sir.

11 Q Was that right before the event came to a close?

12 A Yes.

13 Q And were you at your post when the event itself came to a
14 close?

15 A While I was on my -- taking a quick bathroom break, I
16 heard on the radio somebody say, quote, it looks like it just
17 ended. And that's when I immediately returned to my post and
18 relieved the officers that had relieved me and then I was back
19 on my post.

20 Q Did you see people starting to leave the event after that?

21 A I didn't see -- from my vantage point, I couldn't see the
22 entrance into the building itself until they would have had to
23 have gotten quite a ways away from the building before I could
24 really see them in my line of sight. So I personally didn't
25 see a lot of people leaving the building.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Q As this was all happening, did something unusual happen in
2 the street in front of you?

3 A Yes, sir.

4 Q Can you describe in your own words what happened?

5 A Well sir, I was standing in the driveway area. The
6 driveway is quite wide. I had a number of tall cones, three
7 or four feet tall, that were blocking the entrance to the
8 driveway. My assignment was to only allow a certain group of
9 people into that west entrance and it was very specific. So
10 everybody else was to enter further down from where I was
11 posted.

12 I had most of the entrance blocked with these tall
13 cones. My car was parked kind of parallel with these --
14 almost parallel with these cones inside the driveway in the
15 parking area pretty close to the cones.

16 And there was about -- I had moved about three of
17 them that left an opening on the left side of the driveway if
18 you were facing the street wide enough for about a lane of
19 traffic where a car could drive through there, if necessary,
20 to allow somebody in or to allow somebody out. And I was
21 standing kind of in that open part of the driveway.

22 While I was standing there, a small black car pulls
23 up kind of rapidly and pulls partially into the driveway,
24 parallel to the cones.

25 And I'm not -- obviously, it got my attention because

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 that's not where somebody could park and so on. And the fact
2 that it pulled up kind of rapidly kind of got my attention. I
3 looked at the -- I happened to notice that the vehicle had
4 out-of-state license plates on it, which was not a huge
5 concern, but it was just something I happened to notice.

6 And as the vehicle came to a stop and I was watching,
7 both the passenger door and the driver's door immediately
8 opened.

9 Q Let me stop you there for a moment.

10 Did you have someone else with you on the scene?

11 A Yes, sir. GISD, Garland Independent School District, has
12 a security force. And one of their security officers, Bruce
13 Joiner, had been stationed at the same location with me all
14 day and he was standing to my left.

15 There was a tree kind of to the left of us that was
16 providing shade. He was to my left and a little behind me.
17 And he was standing there when the car drove up.

18 Q Could you see Joiner between you and the car at the point
19 when the car pulled up?

20 A No. He was -- I was -- he was behind me and to my left.
21 The car was to my right.

22 Q Okay. And then what happened?

23 A Well, as soon as both doors opened, the passenger and the
24 driver both exited the vehicle and I had a clearer view of the
25 passenger. And as the passenger exited the vehicle, I could

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 tell that he was -- he was holding something. And I
2 immediately recognized that he was exiting the vehicle with
3 some type of rifle, an assault rifle.

4 When I recognized what that was, I immediately drew
5 my pistol, my service pistol --

6 Q What caliber is your service pistol?

7 A It's a .45 caliber Glock.

8 Q And is it a semiautomatic weapon?

9 A It is.

10 Q How many rounds did you have in your magazine for that
11 pistol?

12 A The magazine holds 13 rounds and I had one round in my
13 chamber.

14 Q Okay. Go on.

15 A So, when I recognized he was exiting the vehicle with a
16 rifle, I immediately took my service revolver, my service
17 pistol out of my holster, and engaged the passenger. I fired
18 several rounds at him; three or four, maybe as many as five.

19 And he fell to the ground. Kind of -- he had moved
20 from the -- from where he had gotten out of the car toward the
21 back of the car, but he fell to the ground. And his rifle
22 came out of his hand but was still in close proximity to him.
23 But he appeared to be at least temporarily incapacitated at
24 that time.

25 So once I saw that he went down and that, you know,

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 appeared to be incapacitated at least temporarily, I directed
2 my attention toward the driver. And I was able to acquire the
3 driver coming around the back of the car.

4 Q What was the driver doing at that point?

5 A He had a -- he had a rifle in his hands, both hands. He
6 had the rifle up. And I can't -- I can't testify as to
7 whether he was firing the rifle at that moment or not, but I
8 heard a muffled -- what sounded like muffled automatic weapon
9 fire. So I'm assuming he was firing the weapon at that time.

10 And I was able to acquire him. I fired three or four
11 rounds in his direction and he fell to the ground as well in
12 similar fashion to as what happened to the passenger. He
13 seemed to be at least temporarily incapacitated as well.

14 I redirected my attention to the passenger and he was
15 moving around. I had concerns that he was able to retrieve
16 his rifle and I fired several more rounds in his direction.

17 He seemed to fall again, meaning he hadn't gotten up,
18 but he at least fell and became more still as though he had
19 become, once again, incapacitated, at least temporarily.

20 So once again, I redirected my attention back to the
21 driver, still concerns about him being armed with an automatic
22 or semi-automatic rifle. I fired -- he was still moving
23 around. I fired several more rounds at him. And he kind of
24 fell and seemed to be incapacitated once again.

25 When I fired the last round that I fired at the

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 driver on the second time was -- was the last round in my gun.
2 My slide locked back, which is an indication the weapon is
3 empty.

4 I immediately dropped my magazine and did what we
5 would call a "tactical reload." It's a very rapid reload.
6 Readied my gun to fire some more rounds. And I started to
7 approach the passenger because he was still moving around.
8 His hands were -- he was clutching kind of up toward his chest
9 and throat area.

10 Q Was there a concern about what he might be doing by
11 clutching around his chest and his throat area?

12 A Yes, sir, there was a couple of concerns.

13 One was that he may have a weapon, another weapon or
14 that he may have some kind of an explosive device or a
15 triggering device.

16 Both of the occupants of the vehicle seemed to be
17 wearing some type of tactical vests and kind of backpacks. I
18 didn't know if there may be some kind of an explosive device
19 in one of those -- in their garment or in their car or what.

20 So my greatest concern was that he was trying to pull
21 a pin on a grenade or touch a button or maybe retrieve another
22 weapon.

23 As I was starting to approach him, that's when the
24 other officers had arrived and got my attention. And I
25 retreated from that position to a position of cover behind my

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 vehicle.

2 Q What happened after you retreated to the position of cover
3 behind your vehicle?

4 A We had SWAT team members that were there at the scene that
5 had been assigned. They had arrived. They have an armored
6 personnel vehicle that arrived.

7 Q Is that vehicle called a Bear Cat?

8 A Yes, sir. We call it -- it's manufactured by Lenco. It's
9 their Bear Cat model.

10 Q Okay.

11 A Those officers then kind of took it from there. I was
12 still up front and then I was moved behind the -- to a safe
13 position behind the Bear Cat.

14 Q All right. I'm going to pause you for a moment there.

15 I would like to direct your attention to what has
16 been marked for identification as Exhibit No. 2. Do you
17 recognize that, sir?

18 A Yes, sir, I do.

19 Q And can you tell us what that is?

20 A Well, that is the west entrance to the Curtis Culwell
21 Center. You can see the vehicle that is at the bottom of the
22 picture is my vehicle. It is -- that was where it was
23 positioned kind of parallel to those cones. Those are the
24 tall cones I was speaking about earlier.

25 And you can see there's one of them moved over to the

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 right side, the other one moved over to the left, that left
2 the -- kind of one lane entrance to the driveway open.

3 Q Looking at the photo, can you tell from where that photo
4 was shot?

5 A That was some type of an aerial photo. I'm not sure where
6 that photo was taken from.

7 Q Does it fairly and accurately depict the scene as it
8 appeared that night, including the positions of the two people
9 that got out of the vehicle and your vehicle and the cones
10 after the shooting took place?

11 A Yes, sir, it does.

12 MR. KOEHLER: Move to admit Exhibit 2 and publish.

13 MR. MAYNARD: No objection.

14 THE COURT: Two is admitted.

15 (Exhibit No. 2 admitted in evidence.)

16 BY MR. KOEHLER:

17 Q Can you show us in the video where your car is --

18 And you have a touch screen next to you. You can
19 just place a little dot on your car. Touch where your car is
20 and it will light up.

21 A This is my car here. (Indicating)

22 Q Okay. Where is the suspect vehicle?

23 A That vehicle there.

24 Q And can you circle first the passenger.

25 A I believe this is the passenger.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Q Okay. And I'm going to clear that and have you circle the
2 driver, please.

3 A That would be the driver. (Indicating)

4 Q Looking at your car, there's an object in front of your
5 car. Can you tell the jury what that is?

6 A That's a police motorcycle.

7 Q And over to the right end of the picture, do you see an
8 object on the ground in front of the suspect vehicle? Do you
9 know what that is from the picture?

10 A Is it the extreme right? Is that what you're talking
11 about?

12 Q The far right.

13 A Yeah. I don't know what that is.

14 Q Okay. Thank you. I'm going to go to Exhibit 3 now.

15 In general terms, can you tell us what Exhibit 3 is?

16 A This is an aerial-type photograph of the suspect vehicle
17 and the two occupants of the suspect vehicle.

18 Q In this photograph is this a closer or further-out view of
19 what we just saw a moment ago?

20 A That would be a closer view of what we saw a moment ago.

21 Q And does it likewise fairly and accurately depict the
22 scene?

23 A It does.

24 MR. KOEHLER: Move to admit and publish Exhibit 3.

25 MR. MAYNARD: No objection.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 THE COURT: Three is admitted.

2 (Exhibit No. 3 admitted in evidence.)

3 BY MR. KOEHLER:

4 Q Looking now at Exhibit No. 3, are you able to identify the
5 weapons that the two individuals had?

6 A I can see --

7 THE COURT: You mean tell us what they are as opposed
8 to identify what they are specifically?

9 MR. KOEHLER: Tell us where they are in the
10 photograph and --

11 THE COURT: Okay.

12 MR. KOEHLER: -- and which weapon came from which
13 person.

14 THE WITNESS: Should I circle them?

15 MR. KOEHLER: Yes, please. And start with -- let me
16 clear first. It's always good. There we go.

17 BY MR. KOEHLER:

18 Q Let's start with the passenger and the passenger's weapon.

19 A This would be the passenger (indicating) and this appears
20 to be his weapon.

21 Q Okay. And now the driver and the driver's weapon, please.

22 A This would be the driver and this would be his weapon.

23 (Indicating)

24 Q You mentioned before that there was a concern about
25 explosive devices.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Did the SWAT team -- you mentioned that the SWAT team
2 arrived on the scene; is that right?

3 A That's right.

4 Q Did they take action in light of the fact that there was
5 this concern?

6 A Yes, they did.

7 Q Can you please describe that for the jury.

8 A Once the -- once the Bear Cat had arrived, we had a -- one
9 of the SWAT personnel, because of the concerns about the
10 potential of detonating some type of explosive device, the
11 decision was made that two lethal headshots would be taken to
12 be sure that both of those suspects would not be able to
13 continue to try and detonate any explosive device or any
14 remote device if one existed.

15 Q I want to back you up a little bit.

16 When you first saw the passenger come out of the car
17 with the gun, did you see him begin to raise the gun before
18 you fired?

19 A I did.

20 Q Could you tell by the way he was holding his gun whether
21 he was attempting to shoot from the hip or from the shoulder?

22 A It was on its way up. He was probably ultimately going to
23 end up at the shoulder, but I don't think he ever got that far
24 up.

25 Q Okay. And then what about the driver?

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 A The driver appeared to be shooting from the shoulder.

2 Q And when they began shooting, were they standing fully
3 upright or were they still in any kind of a crouched position?

4 A The passenger was more crouched as he was exiting the
5 vehicle. He had to kind of swing the barrel of the rifle
6 around to get it out of the vehicle. When I acquired the
7 driver, he was in a more upright position.

8 Q And were they moving or standing still at that point?

9 A They were moving.

10 Q Were you alerted -- were you aware through your time there
11 at the event approximately how many people were at the event?

12 A It's my understanding there was a couple hundred people.

13 Q After the two suspects were neutralized, was there still a
14 concern about potential explosives?

15 A Yes.

16 Q And can you explain what that concern was?

17 A Well, we were unaware or uncertain if they were wearing
18 some kind of explosive device, may have had an explosive
19 device in a backpack or some pouch. They were wearing
20 military-type load-bearing vests that had extra magazines for
21 their weapons and so on.

22 We didn't know if any of those pouches may have
23 contained some kind of explosive device. And on a grander
24 scale, we were concerned about the vehicle that was there,
25 whether there may be -- whether inside the vehicle or in the

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 trunk or somewhere else in the vehicle might be an even larger
2 explosive device that could be remotely detonated.

3 Q Did a unit of the Garland Police Department respond to
4 address those concerns?

5 A Yes. Our Bond Unit did respond.

6 Q And did you see them respond?

7 A No.

8 Q Were you already away from the scene by then?

9 A Yes.

10 MR. KOEHLER: If I could have a moment?

11 At this time I have no further questions for the
12 witness, Your Honor.

13 THE COURT: Mr. Maynard, cross-examination.

14 CROSS EXAMINATION

15 BY MR. MAYNARD:

16 Q Officer Stevens, can you describe how the passenger looked
17 when he got out of the vehicle? What did his facial features
18 look like?

19 A I don't recall looking directly at his face. I think my
20 attention kind of zeroed in on the fact that he had a weapon
21 in his hand.

22 Q That was enough. Okay.

23 Did you get a look at the driver of the vehicle, his
24 face, before you discharged your weapon at him?

25 A Not that I -- not that I recall. I may have. But I don't

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 have a recollection of facial features or any of those kind of
2 things.

3 Once again, I think my attention was really directed
4 more toward the center of mass, which is a training thing.
5 That's what we're trained to do. I think at that point under
6 the circumstances, my training kicked in and I did what I was
7 trained to do.

8 Q And it looked like the driver is -- I don't know -- ten or
9 eleven feet away from the back of the car. Can you tell me
10 what he was doing?

11 A Once he exited the vehicle, he moved toward the back of
12 the car and continued moving in that direction. And
13 ultimately, that's where he fell. He may have moved on the
14 ground slightly, you know, a little bit after the fact, but I
15 know that he had gotten around behind the back of the vehicle
16 pretty rapidly.

17 Q But from the pictures that we saw, it doesn't look like he
18 was crouching down behind the vehicle to get cover. Did he
19 ever do that?

20 A Not that I was aware of.

21 Q Okay. And give us an idea of how long this encounter
22 lasted. Ten seconds? Fifteen seconds?

23 A Probably no more than fifteen seconds.

24 Q Do you have any military training?

25 A No, sir.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Q Okay. Did it look like either one of these guys had any
2 training in military or use of a weapon of this nature?

3 A I didn't have a long enough time to review their skills.

4 Q Okay. You just took care of business?

5 A I detected the threat, not only to myself and my fellow
6 officers, but everybody there and, you know, I did what -- you
7 know, luckily I was able to rely on my training and did what I
8 had to do.

9 MR. MAYNARD: Okay. No questions.

10 THE COURT: Anything on redirect, Mr. Koehler?

11 **REDIRECT EXAMINATION**

12 BY MR. KOEHLER:

13 Q You mentioned your training and you responded using your
14 training. Can you describe a little bit the amount of
15 training that you had?

16 A Well, as beginning in the Police Academy, we have a
17 firearms training course that we have to complete and so on.
18 Of course, that was many long years ago for me.

19 But each year, each of us, each police officer in the
20 City of Garland, State of Texas, is required to qualify with
21 their weapon. It's a -- you have to show a certain
22 proficiency to be able to use your weapon effectively and
23 safely. Like I said, you have to qualify twice a year.

24 And as long as -- and if you don't pass this
25 qualification, then you'll be receiving more training, extra

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 training, and another opportunity to qualify. If you can't
2 qualify with the weapon, then you will be disqualified as a
3 police officer.

4 During my career I have had a number of occasions to
5 be able to attend additional firearms training that's been
6 provided by the City. And so, in addition to just the
7 qualifying course, which is, you know, still training but it's
8 more of a qualification than training, I have had an
9 opportunity to do some other firearms training throughout my
10 career.

11 Q As part of your training, do they -- you mentioned that
12 you have to repeat this on a regular basis. Is there a reason
13 they have you go back and requalify every year and so on?

14 A Well, it's to -- to assure that you still maintain and can
15 exhibit competence with your weapon that you can use it safely
16 and effectively in your defense or defense of somebody else.
17 It's to identify maybe training needs and those kind of things
18 as well.

19 Q Would your skill stay as sharp without that training?

20 A No. It's like most any other skill. Usually the more you
21 practice, the better you are; the less you practice, then the
22 less proficient you are.

23 Q Does your training include firearms maintenance?

24 A Part of the -- once we -- when we go to the range and
25 fire, we do have a cleaning -- several cleaning stations

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 there. We are required to clean our weapons.

2 On some occasions, our range master, who has got
3 gunsmithing qualifications, will not only field strip our
4 weapons -- and "field strip" meaning take it down to some more
5 basic components, take the slide off and the barrel out, so
6 that we can more adequately clean it.

7 The range master will actually take it apart even
8 further and inspect some of the more intricate parts of the
9 weapon to being sure that it's working correctly and
10 serviceable.

11 Q Is field stripping part of the day-to-day cleaning and
12 operation of the firearm?

13 MR. MAYNARD: Objection, Your Honor. Relevancy to
14 the evidence.

15 THE COURT: Sustained.

16 MR. KOEHLER: No further questions.

17 THE COURT: May this witness be excused?

18 MR. KOEHLER: Yes.

19 THE COURT: Any objection?

20 MR. MAYNARD: No, Your Honor.

21 THE COURT: Thank you, Officer Stevens. You may step
22 down, sir, and you are excused as a witness.

23 The government may call its next witness.

24 MR. KOEHLER: This is going to take a moment because
25 we're going to be bringing in evidence that's being brought in

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 securely.

2 THE COURT: Is the witness -- does the witness have
3 the evidence? Can we get the witness on the stand, sworn
4 and --

5 MR. KOEHLER: The United States calls Brian Marlow.
6 Start with that. It's M-A-R-L-O-W.

7 **(Witness duly sworn.)**

8 THE CLERK: Please state your name for the record,
9 spelling your first and last name.

10 THE WITNESS: Brian Marlow. B-R-I-A-N M-A-R-L-O-W.

11 **SPECIAL AGENT BRIAN MARLOW, WITNESS, SWORN**

12 **DIRECT EXAMINATION**

13 BY MR. KOEHLER:

14 Q Good afternoon.

15 A Good afternoon.

16 Q Could you please introduce yourself to the jury.

17 A Special Agent Brian Marlow of the Dallas Division of the
18 FBI.

19 Q How long have you worked for the FBI?

20 A Since 2006.

21 Q And what is your title there?

22 A Special Agent. My job function is Senior Team Leader of
23 the Evidence Response Team.

24 Q Before we go into your duties with that, what did you do
25 before joining the FBI?

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 A I was in the United States Army as a commissioned officer
2 and then I also was a project engineer for various
3 manufacturing and distribution companies.

4 Q How long were you in the Army?

5 A Active duty, a little over two years, and the National
6 Guard for a little over two years as well.

7 Q As part of your duties with the FBI, have you also served
8 as a firearms instructor?

9 A I have since 2008.

10 Q And let's talk a little bit about your duties with the
11 Evidence Response Team. You said you're the Senior Team
12 Leader. What does that involve?

13 A We have a team of 32 members that are on call or standby
14 to respond to various crime scenes or search -- execute search
15 warrants. We may execute federal, as well as we may assist
16 state and local police as well on various searches or crime
17 scene.

18 Q And can you tell us a little bit about the training you
19 received and the protocols you have to follow with the
20 Evidence Response Team?

21 A Well, every one of our members, they go through a two-week
22 course on basic collection, techniques of evidence, and that
23 covers anything from collecting latent prints to impression
24 evidence to all our documentations required, photography as
25 well.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 So that's some of the basic courses, basic functions
2 that we do. There's also advance courses that you can take
3 that are made available to us as well.

4 Q What is the purpose of all of this training for the
5 Evidence Response Team? Is there a goal when responding to a
6 scene that this training is designed to serve?

7 A Our goal or our mission is to basically document the
8 evidence -- or excuse me -- document the crime scene as it is
9 and collect and preserve the evidence that's there.

10 Q And as part of that preserving the integrity of the
11 evidence?

12 A Yes.

13 Q And does preserving the integrity of the evidence involve
14 making sure that it remains in the same condition it was in
15 when you found it?

16 A Yes.

17 Q Were you on duty on May 3rd and 4th of 2015?

18 A I was.

19 Q And were you called out to the scene of the Curtis Culwell
20 Center in Garland, Texas, at some point that night on May 3rd?

21 A Yes, I was.

22 Q Approximately, what time did you arrive at the scene?

23 A I arrived at the outskirts of the scene 10:30 p.m. on the
24 3rd of May. I didn't come onto the scene until about 4:15
25 a.m. on the 4th.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Q And why was that?

2 A The bomb technicians were making sure the scene was safe.

3 Q And through your time at the scene, were you aware of what
4 they did to make the scene safe?

5 A Once I came onto the scene, I did a walk-through with the
6 special agent, the bomb technician, and he explained to me
7 that they used one of their tools to mitigate any explosive
8 devices that were in the car. They also mitigated various
9 bags to make sure that there was no explosive devices there as
10 well.

11 Q When you did the walk-through on the scene, was evidence
12 laying on the street?

13 A Yes. It was scattered throughout.

14 Q And I'm going to show you Exhibits 2 and 3 which are in
15 evidence. Let's start with Exhibit No. 3.

16 THE COURT: It's upside down.

17 MR. KOEHLER: I just noticed that myself. Thank you.
18 There you go.

19 BY MR. KOEHLER:

20 Q Looking at that, was that -- in that photo is there
21 evidence laying on the street that was there the next day when
22 you came through the crime scene?

23 A Some of it, but there was a lot more --

24 Q Okay.

25 A -- once I came on the scene.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Q And having looked at that and having looked at the scene
2 the next day, could you infer where that evidence would have
3 had to have come from?

4 A From the bomb technicians mitigating the car and the bags
5 from explosive threat.

6 Q If I could go only to the witness's monitor, please.

7 I'm about to show you two photographs marked as
8 Exhibit 75. This is page 1.

9 Agent Marlow, do you recognize Exhibit 75?

10 A Yes. It's one of the photographs we took on the scene.

11 Q I'm going to show you page 2. Do you recognize that as
12 well?

13 A Yes. That's also part of the scene. It's kind of the
14 north side of the road.

15 Q And do these photographs depict daylight or nighttime
16 hours?

17 A It was daylight.

18 Q So do you know when these photos were taken approximately?

19 A I would say sometime in the morning.

20 Q On which day?

21 A On May 4th.

22 Q Do these photos fairly and accurately depict the scene as
23 it looked when you arrived?

24 A Yes.

25 MR. KOEHLER: Move to admit Exhibit 75 and going back

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 to page 1.

2 THE COURT: Any objection?

3 MR. MAYNARD: No.

4 THE COURT: 75 is admitted.

5 (Exhibit No. 75 admitted in evidence.)

6 BY MR. KOEHLER:

7 Q Looking at the trunk of that car --

8 THE COURT: And it's just two, correct? No. 75?

9 MR. KOEHLER: Two pages, yes.

10 BY MR. KOEHLER:

11 Q Looking at the trunk of the car, can you tell us about the
12 condition of the back end of that car at that point?

13 A It's -- I mean it's not in its normal state. I mean it's
14 blown -- split apart, I guess.

15 Q Something -- would something require a great deal of force
16 to have done that?

17 A Yes.

18 THE COURT: So your understanding was the bomb
19 technicians did that?

20 THE WITNESS: Yes, ma'am.

21 BY MR. KOEHLER:

22 Q Can you tell us in page 2 of the exhibit where that is in
23 relation to the car in the first page of the exhibit?

24 A The black Chevrolet is, I guess, off to the right of the
25 photo, just outside the edge of the right edge of the photo.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Q So page 2 is left side and page one is the right side?

2 A Yes.

3 Q Can you give the jurors an idea, just generally speaking,
4 of the approximate size of the debris field that you were
5 dealing with with the evidence?

6 A The center part of it was the intersection between the
7 entrance to the parking lot, to the west parking lot, and the
8 four lane road, Naaman Forest Boulevard. That was the center
9 part of it. But we had debris in the parking lot itself, you
10 know, some fragments. It was a pretty large field and it was
11 pretty scattered.

12 Q From looking at the items that you found in the street and
13 the items that you found near the car, could you tell which
14 items, other than the two bodies and the two firearms next to
15 the bodies, where the rest of those materials came from,
16 whether they came from the people themselves or from the
17 inside of the car?

18 A You mean originally before the bomb technicians?

19 Q Correct.

20 A No.

21 Q So did you treat this crime scene as being, for lack of a
22 better term, "pristine" at that point in time?

23 A No. But we -- I mean, we process the scene as we find it.
24 So whatever the scene looks like when we get on the scene,
25 that's how we -- that's how we document it.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Q At the same time, did you know whether the scene was
2 identical to what it was before the bomb techs acted on the
3 car?

4 A Based on the discussions with the bomb tech, no, it was
5 not.

6 Q And so among the objects that you gathered on the scene
7 were there shell casings?

8 A Yes.

9 Q Was there ammunition?

10 A Yes.

11 Q And when you arrived at the scene, were you able to tell
12 which shell casings might have come from the firearms that
13 were there on the scene versus having come from inside the
14 car?

15 A No.

16 Q I want to direct your attention to the two people that
17 were there at the scene laying on the ground.

18 Did your team examine them?

19 A We did.

20 Q Were both individuals alive or deceased at that point?

21 A They were deceased at that time.

22 Q Did you find weapons and ammunition either on their bodies
23 or in the immediate proximity of their bodies?

24 A We did.

25 Q All right. I'm going to start with Exhibit No. 3 --

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 excuse me -- not No. 3. No. 5. I'm actually going to change
2 that. I'm going to go to No. 7 first.

3 May the agent approach the witness, Your Honor?

4 THE COURT: Yes. And request is always required, but
5 you may.

6 Is it sealed?

7 MR. KOEHLER: It is sealed and -- well, the box is
8 not sealed.

9 THE COURT: Okay. That's what I wanted to know
10 because I was going to offer scissors.

11 MR. KOEHLER: Oh, thank you.

12 THE COURT: So tell us what's in the box.

13 THE WITNESS: This is the weapon that was located
14 near Mr. Soofi. It was an Elk River Tool and Die, AK74-type
15 weapon.

16 BY MR. KOEHLER:

17 Q Do you know what the caliber of that weapon is, the size
18 of the ammunition it took?

19 A 5.45 by 39 millimeter.

20 Q Was there a little confusion about that on the scene when
21 the agents first arrived at the scene?

22 A Yes.

23 Q Does that AK-74 weapon resemble another type of weapon
24 that's very similar?

25 A It shoots a similar-type round as an AK-47.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Q So the two types -- or things that can sometimes be
2 confused with each other?

3 A Yes.

4 Q Is Exhibit 7 in substantially the same condition it was
5 when it was found at the scene on May 3rd and 4th of 2015?

6 A Yes.

7 MR. KOEHLER: Move to admit Exhibit 7.

8 MR. MAYNARD: No objection.

9 THE COURT: Seven is admitted.

10 (Exhibit No. 7 admitted in evidence.)

11 THE COURT: Could you please tell the jury what you
12 have done to make the weapon safe so that it cannot be fired?

13 THE WITNESS: We put wire ties to keep the action
14 open so it doesn't close -- actually, we emptied it from any
15 ammunition and then we locked it open so it won't close on
16 them.

17 THE COURT: Have you also removed the magazine?

18 THE WITNESS: Yes, ma'am.

19 MR. KOEHLER: That was my next question.

20 THE COURT: Thank you. Please continue, Mr. Koehler.

21 BY MR. KOEHLER:

22 Q So you have made the weapon safe; is that correct?

23 A Yes.

24 MR. KOEHLER: At this time, if I may borrow the
25 Court's scissors to remove the weapon in the box?

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 THE COURT: Sure. It's already removed. Okay. It's
2 not tied down. So what do you want the witness to do?

3 BY MR. KOEHLER:

4 Q I would like to have the case agent hold the weapon
5 vertically to show it to the jury.

6 THE COURT: That's fine. They both have gloves on,
7 so either one of them can do it.

8 (Exhibit No. 7 being displayed to the jury.)

9 MR. KOEHLER: If you would please return the box and
10 then we'll go to Exhibit No. 8. And may I have the case agent
11 approach the witness with Exhibit 8, Your Honor?

12 THE COURT: Yes. And we'll recess after we get
13 Exhibit 8 described and possibly admitted.

14 BY MR. KOEHLER:

15 Q Agent Marlow, do you recognize Exhibit No. 8?

16 A I do.

17 Q Can you tell the Court and the jury what that is?

18 A This is the magazine and the ammunition that was found
19 within the magazine that was inserted into the Elk River
20 AK-type 74.

21 Q How many rounds of ammunition were in the magazine in the
22 gun?

23 A 73 is what my memory serves me.

24 Q And is the ammunition and the magazine, with the exception
25 of the ammunition having been removed and processed, in

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 substantially the same condition it was when it was found on
2 May 3rd and 4 of 2015?

3 A Yes. That is correct.

4 MR. KOEHLER: Move to admit Exhibit 8.

5 MR. MAYNARD: No objection.

6 THE COURT: Eight is admitted.

7 (Exhibit No. 8 admitted in evidence.)

8 BY MR. KOEHLER:

9 Q Looking at the magazine itself please, does it have any
10 indication on it what its capacity is?

11 A Yes, it does.

12 Q What is its capacity?

13 A 95 rounds.

14 MR. KOEHLER: If I could have the case agent display
15 the magazine and the ammunition for the jury?

16 THE COURT: He may.

17 MR. KOEHLER: Just one at a time is fine.

18 (Exhibit No. 8 being displayed to the jury.)

19 THE COURT: Any more questions about 8?

20 MR. KOEHLER: No, Your Honor, not at this time.

21 THE COURT: Then we will recess for the day.

22 Sir, you may step down.

23 Ladies and gentlemen, we are going to recess until
24 nine o'clock tomorrow morning. I want to remind you again of
25 the admonition that you are not to discuss the case among

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 yourselves or with anyone else or form any conclusions about
2 the case until you have heard all the evidence.

3 Remember that the only thing that you can tell people
4 is that you have been selected to sit on a jury, the case may
5 last up to five weeks, and you can't tell them anything else
6 about the trial until it is over.

7 Also, you may have heard things said today, seen
8 people's names on slides, heard different terminology.

9 If you want to know any more about it, you have to
10 find out about it here in this courtroom. You cannot use the
11 Internet or any other reference material to try to learn
12 anything about any of the people that may be involved in the
13 case, talked about during the case, any of the terms that were
14 used, any of the organizations that were or may be mentioned
15 in the future.

16 If there is something you're curious about, ask me in
17 writing. I will talk to the lawyers about it and we will see
18 if we can get you the answer or at least explain to you why we
19 cannot.

20 And so with that further admonition, let me excuse
21 the jury at this time and we will see you tomorrow morning at
22 9:00 a.m. Just leave your notebooks in your seats. We'll
23 collect them and then we'll redistribute them in the morning.

24 (Open court, no jury present at 4:25 p.m.)

25 THE COURT: Please sit down. I have two things. I

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 didn't know if you have any.

2 The two things are, first, I didn't mention -- you
3 can go ahead and step down, sir. I did not mention the
4 photographs yet because I wanted to doublecheck and make sure
5 we were going to do that and at least our -- at least the two
6 or three witnesses that we now had have consented to it.

7 MR. KOEHLER: Thank you for bringing that up, because
8 at first I didn't know what you meant by "photographs" and we
9 had that flagged for you.

10 The FBI has declined to have their employees
11 photographed, but otherwise, we will be asking our witnesses
12 to consent to that.

13 THE COURT: Okay. And that's -- and so did the two
14 individuals from Garland agree to be photographed?

15 MS. BROOK: I don't think they have yet been asked
16 but we will take care of that before they depart today.

17 THE COURT: Okay. Mr. Joiner and Officer Stevens.

18 MS. BROOK: Okay.

19 THE COURT: Okay. And I wanted to make -- I'm going
20 to let the jury know that it's voluntary, but I didn't want to
21 talk to them about it until I was sure we were actually going
22 to have some.

23 MR. KOEHLER: I have a feeling because of the nature
24 of their actions in the case, that they would probably like to
25 be sure that their photographs will be collected from everyone

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 and destroyed afterward.

2 THE COURT: They will be. In fact, if you could
3 three-hole punch them, that would be nice. If you can't, we
4 can do it.

5 MR. KOEHLER: We will.

6 THE COURT: And we will have them put them in their
7 notebooks and then I will tell them that we're going to
8 collect them -- they can't take them home. We'll collect them
9 with their notebooks long with their notes at the end.

10 Go ahead. Ms. Brook?

11 MS. BROOK: Just briefly as a corollary. Is it
12 possible, Your Honor, to admonish the jury not to take any
13 photographs of the photographs with their phones or anything
14 like that. That might alleviate some anxiety.

15 THE COURT: I will try to remember to tell them that
16 but please remind me.

17 The second thing that I wanted to mention. I thought
18 I went over this with counsel. Mr. Koehler, when you asked if
19 we could take a short break so that you could discuss
20 something about an exhibit with Mr. Maynard and I said no.

21 First of all, when you have 16 jurors, there are no
22 short breaks. Once you let 16 jurors leave the courtroom and
23 they start using the rest room, there is no such thing as a
24 break less than 20 minutes and we're lucky if we can get them
25 all situated for that.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 But secondly, when I tell the jury that we're going
2 to be taking evidence from nine o'clock in the morning to 4:30
3 in the afternoon with a break in the morning, a break in the
4 afternoon and a lunch break, I really mean it. We're not
5 going to take any other breaks unless something unexpected
6 happens.

7 And so far nothing unexpected has happened, so I
8 expect that if there are things that we need to discuss, that
9 we do it at 4:30, we do it before 9:00 a.m., we shorten our 15
10 or 20-minute break in the morning or in the afternoon or we
11 shorten our lunch break so that the jury is hearing evidence
12 during the time that I promised them that they would be
13 hearing evidence rather than wondering why we're taking so
14 long to do whatever it is that we're doing.

15 That was my two things. Anything else, Mr. Koehler?

16 MR. KOEHLER: No, Your Honor. And I apologize for
17 that. There was an issue about videos that we wanted to be
18 certain that the defense had actually seen. Because when we
19 gave them the video in discovery, there was an awful lot of it
20 and we wanted to make sure they had seen it.

21 THE COURT: So the video from Garland? Is that what
22 you want to show of the crime --

23 MR. KOEHLER: Yes.

24 THE COURT: -- of the scene.

25 MR. KOEHLER: It's a motorcycle video that Officer

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 Orman -- and the defense graciously has offered to stipulate
2 foundationally for these, which is why we're going through the
3 ERT supervisor rather than parading 25 witnesses from the ERT
4 before you.

5 THE COURT: Thank you, Mr. Maynard.

6 MR. MAYNARD: You're more than welcome.

7 THE COURT: Although foundational testimony is very,
8 very riveting.

9 MR. KOEHLER: We have found the same.

10 Anyway, back to these two videos. So one of them is
11 the video from the camera that is mounted on Officer Orman's
12 motorcycle. Officer Orman is not going to come testify for
13 five minutes to lay foundation and fly six hours to do that
14 and we're grateful to the defense attorneys for that
15 agreement.

16 And the same thing is true for another officer,
17 Officer Mittendorf.

18 Officer Orman pulls up to the scene right as Officer
19 Stevens is standing over the two and getting ready to back
20 away. And we see him back away off of the video. And then
21 the second video is Officer Mittendorf's car. And the scene
22 is a little bit darker, but you see him pull up and you hear
23 the last two shots that are fired in that video.

24 THE COURT: The ones that the SWAT team did?

25 MR. KOEHLER: Yes.

CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

1 THE COURT: Okay.

2 MR. KOEHLER: And there is a call out on the radio
3 that you hear that there is an officer -- I believe they say
4 there's two officers down because they don't realize that
5 Joiner is not a police officer.

6 THE COURT: Okay. Anything else, Mr. Maynard, before
7 we see you tomorrow morning at 9:00?

8 MR. MAYNARD: No, Your Honor.

9 THE COURT: Okay. Court is in recess until nine
10 o'clock tomorrow morning.

11 (Proceedings adjourned at 4:31 p.m.)

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CR15-00707-PHX-SRB JURY TRIAL-DAY #2 2-17-16

C E R T I F I C A T E

I, ELIZABETH A. LEMKE, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 1st day of August, 2016.

s/Elizabeth A. Lemke
ELIZABETH A. LEMKE, RDR, CRR, CPE